

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

Civil Revision Petition No.3618 of 2012

ORDER:

This Civil Revision Petition is filed under Section 5 of the Limitation Act, 1963 to condone the delay of 488 days in filing an application to set aside the *ex-parte* order dated 27.04.2012.

The suit was filed for partition of the suit schedule property into two shares and to allot one share to the plaintiffs herein.

The second petitioner herein is the wife of late Alladi Linga Rao. As per the averments in the application filed under Order IX Rule 13 C.P.C, the deponents state on oath that she came to know about the preliminary decree being passed only on 01.02.2011. She states that earlier, she was under the impression that the matter was compromised.

The contesting respondents herein have filed a counter and stated that the petitioners took several adjournments for filing the written statement and that petitioners also received notice in the final decree petition filed after the impugned order was passed and that they did not file any counter.

The only document marked on behalf of the petitioners is certificate dated 22.02.2011. It is the certificate issued by one Dr.M.Ravinder Reddy stating that the petitioner, was advised bed rest from 30.09.2009 to 20.02.2011.

The lower Court, in the impugned order, considered all the aspects and came to a conclusion that the details of the Medical Certificate and the period of treatment are not mentioned in the affidavit. The lower Court also held that the delay is not satisfactorily explained and the date of the death of the husband was not mentioned. In addition, the lower Court also mentioned in para 11 of its order that I.A.No.29 of 2010 was filed for appointment of a Commissioner to make final decree partition as per the terms of the preliminary decree. The petitioners appeared before the lower Court on 11.03.2010 in I.A.No. 29 of 2010 and hence they were aware of the *ex-parte* decree passed in the case.

But in the affidavit filed in the revision petition it is averred that the petitioners were aware of the passing of the order preliminary, *ex-parte* decree on 01.02.2011 only.

The learned counsel for the petitioners also cited judgment reported in ***Naseem Bano v. State of U.P. and others***¹ on the issue of non-traverse and stated that what is stated in para 6 of I.A.No.673 of 2011 is not answered in the counter and must be deemed to have been admitted. While this is true, the critical aspect is, the date on which the petitioner came to know of the *ex-parte* partition decree. Hence, this judgment is not very relevant.

¹ AIR 1993 SCC 2592

In addition, ***Bhagmal and Others v. Kunwar Lal and others***² is also cited, for the same proposition and paragraph 13 was drawn to the attention of this Court. This is a case of written panchanama describing the compromise. The witnesses relating to the Panchanama were also examined. Therefore, the non-attendance of the parties was held to be justified. It was also noticed that the appellants in that case moved an application within 30 days from the date of the decree.

S.Ganesharaju and another v. Narasamma and others³, the another judgment, which is cited across the bar, wherein the Hon'ble Supreme Court held that the expression "sufficient cause" should be liberally construed and an opportunity should be given to condone the delay so that an order is passed on merits.

D.D.Vaishnav v. State of Madhya Pradesh and others⁴ is also cited and in this case also, the Hon'ble Apex Court condoned the delay, but reasons for the delay are not set out in the judgment and as such it appears to be a judgment on the facts of the case.

The short and simple question that survives for consideration is, whether the petitioners have sufficiently explained the delay in the application after they were aware of the *ex parte* decree. Despite drawing the attention to the

² (2010) 12 SCC 159

³ (2013) 11 SCC 341

⁴ (2009) 16 SCC 777

facts stated in para 11 of the judgment that there is no satisfactory explanation forthcoming as to the date of knowledge of the passing of the *ex-parte* decree.

From the reading of the order of the lower Court, it appears to be clear that the petitioners have appeared before the Court on 11.03.2010. On that day they appeared before the Court in the application filed by the plaintiff to partition the petition schedule property in terms of the preliminary decree dated 01.10.2009.

Since this fact is not traversed, it appears to be clear that the petitioners were aware of the passing of the preliminary decree by 11.03.2010 when they appeared in the said application. Hence, the averment that in the current application that they were aware of passing of the decree only on 01.02.2011 does not appear to be correct.

For these reasons, I am of the opinion that there are no *bona fides* in the present application.

In the result, the civil revision petition is dismissed as there are no merits in the same. However, there shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this revision shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 20.10.2017
KLP