

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 2882 of 2011

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, is filed assailing the Order 19.11.2010 in I.A.No.206 of 2009 in O.S.No.38 of 2003 passed by the Andhra Pradesh State Wakf Tribunal, Hyderabad, dismissing an application filed under Section 5 of Limitation Act to condone the delay of 1963 days in filing a petition to set aside the *ex parte* decree dt. 11.08.2003.

Heard Sri Rupendra Mahendra, learned counsel for the petitioner.

No representation for learned counsel for the respondents.

The only ground urged before this Court is that no summons were served on the petitioner and thereby, the petitioner is not aware about the pendency of the litigation and could not file any application before the Tribunal for setting aside the *ex parte* decree dt. 11.08.2003 within the time.

The decree was passed on 11.08.2003 and delay was about 1963 days in filing the petition. The respondents filed counter denying the material allegations *inter alia*

contending that the petitioner could not explain each and every day of the delay and in the absence of any specific reason, the delay cannot be condoned and that passing of an *ex parte* decree is within the knowledge of the petitioner and prayed to dismiss the petition.

Initially the petitioner filed an affidavit without details, but later, he appears to have filed a better affidavit, which disclosed that the petitioner on coming to know about passing of *ex parte* decree against the petitioner, he filed the present application to condone delay of 1963 days.

As seen from the allegations made by the petitioner in the affidavit, the petitioner is unaware of the pendency of the proceedings since no notice was served on him under any of the rules contained under Order 5 of CPC. When the petitioner is contending that no notice was served, it is for the Court to verify at least whether notice was served in any of the modes contemplated under Order 5 CPC, but the Tribunal simply, dismissed the petition on the sole ground that the petitioner did not explain each and every day of the delay and if no notice was served, the petitioner can file an application taking advantage of Article 123 of the Limitation Act. In the absence of any finding whether notice was served on the petitioner in any of the modes contemplated under Order 5 of CPC, the Order passed by

the Tribunal cannot be sustained. Therefore, the Order dt.19.11.2010 is set aside remanding I.A.No.206 of 2009 in O.S.No.38 of 2003 to the Tribunal to verify whether notice was actually served in any of the modes contemplated under Order 5 of CPC on the petitioner and record its findings if served, and dispose of the same in accordance with law as expeditiously as possible.

With the above direction, this Civil Revision Petition is allowed.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 26-07-2017.
eha



HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



CRP No.2882 of 2011

Dt. 26-07-2017

eha