

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

C.R.P.No.2758 of 2017

ORDER

This civil revision petition is filed questioning the order dated 27.04.2016 passed in I.A.No.2060 of 2011 in un-numbered Appeal Suit of 2011 (GR No.6921 dated 29.08.2011) by the learned Principal District Judge, Srikakulam, dismissing the petition filed under Order 5 of Limitation Act, to condone the delay of 2793 days in preferring the appeal.

2. Petitioner herein is defendant and respondents 1 and 2 herein are plaintiffs in O.S.No.112 of 1999 on the file of the Junior Civil Judge, Amadalavalasa. Originally, the said suit was filed by Gandivalasa Appamma for partition and the same was decreed on 26.02.2004. Thereafter, she died on 20.03.2004 and respondents 1 and 2 being her legal representatives were brought on record. It is stated that during her life time, she executed a deed bequeathing her share in favour of respondents 1 and 2. Challenging the said decree and judgment, the petitioner/defendant filed appeal as a pauper along with a petition to condone the delay of 542 days in filing the appeal and the same was returned on 24.06.2006 for compliance of the objections, but it was not re-submitted within time. In June, 2006, respondents/plaintiffs filed a final decree application and the trial Court appointed an Advocate Commissioner for determining the meets and bounds. During the course of enquiry before the Advocate Commissioner, the petitioner/defendant was also examined along with other persons. The Advocate Commissioner filed a final report dividing the properties by meets

and bounds and no objections were filed therefor. However, the petitioner filed I.A.No.363 of 2011 in O.S.No.112 of 1999 to re-open the matter and re-entrustment of the warrant to Commissioner. The trial Court dismissed the said petition on 10.10.2011, observing that the Advocate Commissioner had executed the warrant, divided the property about 5 to 6 years back and no objection was filed against the report of the Advocate Commissioner and after lapse of 5 years, she filed the petition with vague averments and she did not spell out as to how the Advocate Commissioner had committed fault and it also observed that the appeal preferred by the defendant against the judgment and decree in O.S.No.112 of 1992 is not numbered and the petition is filed to drag on the matter.

3. While the matter stood thus, during 2004 to 2011, even though the petitioner/defendant contested the final decree petition, she has not re-submitted the appeal, which was returned as long as back on 24.06.2006. However, on 23.08.2011, petitioner/defendant preferred fresh appeal AS (SR) No. of 2011 (GR No.6921) along with I.A.No.2060 of 2011 to condone the delay of 2793 days in preferring the appeal and the same was dismissed. The Appellate Court, while discussing the entire conduct of petitioner by the order impugned, rejected her request to condone the delay, which is abnormal.

4. Learned counsel appearing for petitioner/defendant submitted that since the suit is filed for partition, an opportunity should be afforded to petitioner by condoning the delay, lest her valuable right would be defeated.

5. It is no doubt true that the Courts should be liberal in condoning the delay and affording opportunity for the purpose of disposal of the matter on merits, however, the over all conduct of the parties need to be considered while taking a liberal approach in condoning the delay. In the circumstances stated in the affidavit, petitioner was not in communication or contact with the Advocate for legal advice for more than 5 or 6 years i.e., between 2004 to 2011, as already stated, but on her behalf, a preliminary decree was passed and as a matter of fact, the Advocate Commissioner has submitted a report after recording the evidence of the witnesses and also in the presence of the counsel appearing on her behalf. Having preferred the appeal in 2005 with a delay of 542 days, in stead of resubmitting the same with an application to condone the delay of representation, the petitioner filed a fresh appeal with the delay of 2793 days.

6. In view of the above, the Appellate Court has taken into consideration all these aspects and discussed minutely the reasons and dismissed the application by the order impugned and I see no error apparent on the face of the record warranting interference by this Court. Hence, there are no merits in the civil revision petition and the same is liable to be dismissed.

7. The Civil Revision Petition is accordingly dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

13th October, 2017
sj

M.S.K.JAISWAL,J