

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.1858 OF 2017

ORDER:

Heard learned counsel for the petitioners/plaintiffs and also the learned counsel for revision respondents/defendants and perused the impugned order of the lower court dated 06.03.2017 in I.A.No.739 of 2015, which is an application to condone the delay under Section 5 of the Limitation Act of 32 days in filing application under Order 39 Rule 13 to set aside the *ex parte* decree dated 23.09.2015, passed against the two defendants in the suit of the plaintiff for specific performance of the contract for sale dated 16.11.2012.

2. In fact, the defendants put forth their appearance before the trial court pursuant to the summons, having appeared through advocate, they did not file written statement within the time and the court instead of passing any order under Order 8 Rule 10 of C.P.C., as also laid down by the Apex Court in ***Balraj Taneja and another Vs. Sunil Madan and another***¹, set them *ex parte* and passed the *ex parte* decree.

3. It is the application to condone the delay of 32 days saying the two defendants who are due to the serious illness could not attend the court and cause filing the written statement and they have no information even subsequently in

¹ (1999) 8 SCC 396

filing the application to set aside the *ex parte* decree, that is the reason why there is a delay.

4. In fact the approach required is pragmatic. Once the court allowed the application in exercising the discretion that too because the court set them *ex parte* instead of allowing to participate, thus, against the impugned order, there is nothing to interfere but for to say for early disposal of the suit, which is of 2014, preferably within six months from the date of receipt of a copy of this order. Needless to say, once delay is condoned, the setting aside the *ex parte* decree and receiving of the written statement is automatic and at any cost to do so by virtue of this order.

5. Accordingly and with the above direction, this Civil Revision Petition is disposed of. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

30.06.2017
SS

DR.B.SIVA SANKARA RAO, J