

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.143, 218 and 483 of 2018

COMMON ORDER:

C.R.P.Nos.143 and 218 of 2018 are filed aggrieved by the separate orders dated 20.11.2017 passed by the learned III Additional Junior Civil Judge, Ongole, in I.A.Nos.401 and 402 of 2017 which are filed in O.S.No.584 of 2009 to implead respondents 4 to 6 as defendants 4 to 6 being legal representatives of the deceased respondent No.1-Tumuluri Seshagiri Rao and to condone the delay of 1294 days in filing the said application.

2. C.R.P.No.483 of 2018 is filed aggrieved by the order dated 01.03.2013 passed by the learned I Additional Junior Civil Judge, Ongole, in I.A.No.765 of 2012 which is filed under Section 5 of the Limitation Act in O.S.No.584 of 2009 to condone the delay of 748 days in filing the petition to add the legal representatives/ proposed defendants in the suit.

3. Heard both sides.

4. In fact, in a suit for specific performance of contract for sale said to have been executed by defendant No.1, his second wife (since first wife died before marriage with her) and daughter by names Kamakshamma and Girija Aparna were also arrayed as defendants 2 and 3. The said Seshagiri Rao died on 12.05.2010 and it is to bring other legal representatives also

viz., Aruna Bharathi, Nalini Aravinda, who are also two more daughters of second wife and Venkateswara Sarma, Durga Vimala and Thumuluri Chandra Sekhar, the children through the first wife of him, two petitions were filed in I.A.No.765 of 2012 and I.A.No.401 of 2017 and application in I.A.No.401 of 2017 under Section 5 of the Limitation Act also filed showing as if there is delay 1294 days in filing the application to bring respective proposed legal representatives on record. In fact, in the very suit, it is not the sole defendant that died but his second wife and daughter also parties when he died pending suit. Once that estate is represented by them, there is no question of abatement from his death for not bringing the legal representatives under Order XXII Rule 4 C.P.C. within 90 days and to seek for setting aside the abatement after expiry of 60 days added to the 90 days and any question of Section 5 limitation period to condone arises only after 150 days from the date of death and once there is no question of abatement and no need of filing of application under Order XXII Rule 9 C.P.C. there is no need of filing application under Section 5 of the Limitation Act and the dismissal of Section 5 Limitation Act application is unsustainable, even it is inadvertently passed by ignorance of the same, thereby, the dismissal order in I.A.No.402 of 2017 is set aside and the petition before the lower Court is closed, for, such a petition and getting any relief

therein does not arise as referred supra, undisputedly, they are the first wife children and second wife other children to be brought on record covered by the two other applications supra. Hence, they are all impleaded as respective defendants i.e., Aruna Bharathi, Nalini Aravinda, as defendants 4 and 5 and Venkateswara Sarma, Durga Vimala and Thumuluri Chandra Sekhar, as defendants 6 to 8.

5. Accordingly, all the Civil Revision Petitions are allowed, subject to payment of costs of Rs.1,000/- (Rupees One thousand only) to the Army Welfare Fund. The learned Counsel for the petitioner undertakes to send the amount by obtaining demand draft by registered post with acknowledgement due and file proof before the Registry. The lower Court is directed to cause carry the amendment and proceed with the further trial of the matter from any additional pleadings (additional written statement and rejoinder as the case may be) with consequential amendment contemplated by Rule 28 of the Andhra Pradesh Civil Rules of Practice.

6. Consequently, miscellaneous petitions, if any shall stand closed. No order as to costs.

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JUSTICE Dr. B.SIVA SANKARA RAO

Date: 23.03.2018

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