

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.844 of 2018

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, by the unsuccessful petitioner-plaintiff is directed against the order, dated 04.12.2017, of the learned Senior Civil Judge, Bhongir, passed in IA.No.829 of 2016 in OS.No.30 of 2008 filed under Section 5 of the Limitation Act, 1963, requesting to condone the delay of 558 days in bringing on record the proposed defendants 10 to 12 as party defendants 10 to 12, they being the legal representatives of the deceased 6th defendant.

2. I have heard the submissions of *Sri Papaiah Peddakula*, learned counsel appearing for the revision petitioner-plaintiff at the stage of admission. I have perused the material record.

2.1 As this Court is inclined to dispose of this revision petition at the stage of admission, there is no need to issue notices to any of the respondents, who are contesting the proceedings before the trial Court.

3. The facts, which are required to be stated as a prelude to this order, in brief, are as follows:

The plaintiff brought the suit against defendants 1 to 9 for partition of the plaint schedule properties and for other reliefs. The 7th defendant filed a written statement and is contesting the suit. The defendants 1 to 5, 8 & 9 remained *ex parte*. While so, the 6th defendant died leaving behind him the proposed defendants 10 to 12, who are his wife and sons. As there was delay in bringing on record the said proposed defendants 10 to 12 as party defendants in the suit, the instant application for condonation of delay of 558 days is filed along with two other applications viz., one for setting aside the abatement and the other for according permission to bring on record the said proposed

defendants as defendants 10 to 12, they being the legal representatives of the deceased 6th defendant. However, by the impugned order, the trial Court dismissed the instant application filed for condonation of delay. Therefore, the plaintiff is before this Court.

4. Learned counsel for the petitioner would contend as follows: 'The order impugned shows that on the day the impugned order was passed, the petitioner-plaintiff was called absent and that the 7th defendant already on record and the proposed defendants 10 to 12 reported no counters and that the petition was not resisted. In the absence of the petitioner and her counsel before the trial Court, the trial Court, instead of passing an order on merits, ought to have dismissed the petition for default; or in the alternative, the trial Court ought to have allowed the petition as the contesting respondents reported no counters. Therefore, the order impugned is liable to be set aside. Though adequate reasons are given in the affidavit filed in support of the petition, the trial Court erroneously observed that convincing and tenable grounds are not made out for condonation of delay. Valuable rights in immovable property are involved and therefore, the trial Court ought to have condoned the delay and permitted to bring on record the legal representatives of the deceased 6th defendant and ought to have afforded an opportunity to have the cause decided on merits instead of dismissing the application for condonation of delay. Hence, the order impugned is liable to be set aside.'

4.1 Learned counsel would further bring to the notice of this Court that the petitions for setting aside abatement and for permission to bring on record the legal representatives of the deceased 6th defendant as defendants 10 to 12 are still pending and that the said applications are not yet disposed of by passing consequential orders in the said applications pursuant to the impugned orders dismissing the application under Section 5 of the Limitation Act.

4.2 He also relied upon a decision of the Supreme Court in Pankajbhai Rameshbhai Zalavadia vs. Jethabhai Kalabhai Zalavadiya (deceased) through L.Rs. and Ors. [(2017)9SCC700] in support of the proposition that while dealing with applications for permission to bring on record legal representatives of a deceased party, the trial Courts shall not adopt a hyper-technical approach which may result in the miscarriage of justice. He further submitted that as the heirs of the deceased Defendant No.6 were the persons with interest in the outcome of the suit, the instant application ought to have been approached keeping in mind that the Courts are meant to do substantial justice between the parties and that technical Rules or procedures should not be given precedence over doing substantial justice and that undoubtedly, justice according to the law does not merely mean technical justice but means that law is to be administered to advance justice as held in the above cited decision.

5. I have given earnest consideration to the facts and submissions.

6. To begin with, it is to be noted that when the petitioner-plaintiff was called absent and there was no representation for her on the date the subject application was taken up for hearing, the trial Court ought to have either adjourned the matter to give one more opportunity to the petitioner or ought to have dismissed the said petition for default instead of passing an order on merits in the event the trial Court was not inclined to adjourn the matter on that day. However, the trial Court did not do so. Further, in the impugned orders, the trial Court noted that the contesting 7th respondent and proposed defendants 10 to 12 have reported no counters and yet dismissed the petition stating that the reason assigned is not a convincing and tenable reason for condonation of delay. In the affidavit, the plaintiff, who is a lady, aged about 50 years, categorically stated that she being a lady could not trace out the addresses of the proposed defendants 10 to 12 and, therefore, the delay had

occasioned. In the considered view of this Court, having regard to the said fact that was pleaded and the further fact that valuable rights in immovable property are involved in the /is, the trial Court ought to have allowed the petition for condonation of delay by accepting the reason assigned as valid and sufficient explanation more particularly when the contesting 7th defendant and the proposed defendants 10 to 12 reported no counters and had not resisted the application. In that view of the matter, this Court finds that the order impugned is unsustainable and is liable to be set aside.

7. In the result, Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.No.829 of 2016 in OS.No.30 of 2008 on the file of the Court of the learned Senior Civil Judge, Bhongir, is allowed. The trial Court is now directed to take up the application filed to set aside abatement and the other application filed for permission to bring on record the legal representatives of the deceased 6th defendant and dispose them of as per the procedure established by law, if the same are not already disposed of. In the event, the trial Court had passed consequential orders in the said applications as a sequel to the dismissal of the instant application, the said orders shall stand set aside as a sequel to the orders now passed by this Court in this revision petition and the trial Court, therefore, shall take up those applications as directed supra for disposal in accordance with the procedure established by law.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

12.02.2018
Vjl