

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2333 of 2018

ORDER:

1) Aggrieved by the order, dated 19.02.2018, passed in I.A.No.1659 of 2017 in A.S.No.87 of 2014 on the file of the XII Additional District Judge, Pithapuram, wherein an application filed under Section 5 of Limitation Act to condone the delay of 1180 days in filing a petition to add the legal representatives of second respondent was dismissed, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The first respondent herein filed a suit for declaration, which was decreed. Aggrieved by the said decree, the petitioners herein preferred an appeal. In the said suit, the 2nd defendant was shown as a proforma party, who died on 07.12.2013 leaving his wife, and children as his legal representatives. As the 2nd defendant was shown as a proforma party, the petitioners herein could not add the legal representatives of the 2nd defendant in the appeal. Now the children of the 2nd defendant are claiming right over the property, and as such an application under Section 5 of the Limitation Act came to be filed to condone the delay of 1180 days in bringing the legal representatives of the 2nd defendants on record, which came to be rejected. Challenging the same, the present Civil Revision Petition came to be filed.

3) Learned counsel for the petitioners mainly submits that the delay in filing the application to bring the legal representatives of defendant No.2 was neither wilful nor wanton. Learned counsel for the

respondents would submit that when the second defendant was only a proforma party, the question of bringing his legal representatives on record would not arise. Apart from that the petitioners did not explain the day to day delay. He also submits that only with a view to drag on the proceedings, the present petition came to be filed.

4) As seen from the record, the deceased 2nd defendant is none other than the own brother of 1st petitioner; he is residing opposite to the house of the proposed legal representatives and he was aware about the death of the deceased and the availability of his legal representatives. Though they were aware about the death of the 2nd defendant, the petitioners did not take any steps to bring his legal representatives on record within the time or atleast within a reasonable time. The petitioners failed to explain the day to day delay and no sufficient cause is shown to condone the delay. Apart from that, the 2nd defendant is shown as only a proforma party, as such, adding his legal representatives may not be necessary. Hence, I see no reasons to interfere with the impugned order.

12) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

31.08.2018
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