

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Civil Revision Petition No.2354 of 2018

ORDER:

Since none appeared for the respondents on 20.09.2018, the matter was directed to be listed under the caption “for orders” today. Even today, though the matter is listed under the caption “for orders”, neither is the Learned Counsel for the respondents present, nor is there any representation on his behalf.

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the VII Senior Civil Judge, City Civil Court, Hyderabad, in I.A.No.271 of 2015 in O.S.No.2545 of 2008 dated 02.06.2016. I.A.No.271 of 2015 was filed by the petitioners herein under Section 5 of the Limitation Act seeking condonation of delay of 109 days in filing an application to bring the legal representatives of the deceased on record. During the pendency of the Suit in O.S.No.2545 of 2008, the 1st defendant died leaving behind him respondents 12 to 17 as his legal representatives. It is the case of the petitioners that, consequent on the sudden demise of the 1st defendant as also the 3rd defendant, the family was in grief and shock; and, in such circumstances, they lost track of time and the need to file an application to bring their legal representatives on record within time.

In the order under revision, the Court below held that the petitioners ought to have filed an application, under Order XXII Rule 9 CPC, to set aside the order of abatement; and, in the absence of any such application having been made, the application to bring the legal representatives on record could not be entertained as it was barred by limitation.

Sri Mohd. Asifuddin, Learned Counsel for the petitioners, would submit that I.A (SR) No.1855 of 2015, under Order 22 Rule 9 CPC, was filed to set aside the order of abatement; another application was filed to bring the legal representatives on record along with the application to condone the delay of 109 days; the application to set aside the order of abatement was not taken-up for consideration by the Court below; and, without taking into consideration the said application, the order under revision has been passed.

As I.A (SR) No.1855 of 2015 is said to have been filed on 01.05.2015, seeking to have the order of abatement set aside, it is but appropriate that the Court below decides all the three I.As (i.e the I.A filed to set aside the abatement; the I.A to bring the legal representatives on record and the I.A to condone the delay) together. I consider it appropriate, therefore, to set aside the order under revision and restore I.A.No.271 of 2015 to its file. The Court below shall consider I.A.No.271 of 2015, I.A (SR) No.1855 of 2015, and the I.A filed to bring the legal representatives on record, together and pass appropriate orders thereon in accordance with law.

The Civil Revision Petition is, accordingly, disposed of. The Miscellaneous Petitions, if any pending, shall also stand disposed of. No costs.

(RAMESH RANGANATHAN, J)

Date:05.10.2018.

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