

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.6248 OF 2016

ORDER:

This revision petition is preferred under Section 115 of Code of Civil Procedure (for short "C.P.C.") questioning the order dated 22.11.2016 passed in I.A.No.169 of 2016 in O.S.No.34 of 2015 in by the Junior Civil Judge, Narayanpet, whereby the petition filed under Section 5 of Limitation Act to condone the delay of '92' days in filing petition under Order IX Rule 13 of C.P.C., was dismissed.

The respondents – plaintiffs filed suit for perpetual injunction claiming that they are the owners of the property alleging that the petitioners, who are the defendants, are trying to interfere with the possession and enjoyment of the property. The Court ordered summons to the petitioners, but on the date of adjournment the petitioners could not appear before the Court either personally or through the Counsel due to the reason beyond their control i.e. the petitioners underwent treatment for their serious ailment. Thereby, there is delay of '92' days in filing petition under Order IX Rule 13 of C.P.C. due to the above reason, which is beyond their control.

The respondent filed counter and opposed the petition on the ground that the suit was decreed and E.P. was filed and that there are no grounds to condone the delay in filing the petition under Section 5 of Limitation Act and Order IX Rule 13 of C.P.C..

The Court below after considering law laid down in various judgments by the Apex Court concluded that there are no grounds to condone the delay of '92' days in filing the petition under Order

IX Rule 13 of C.P.C.; dismissed the petition by disbelieving the medical certificate.

Aggrieved by the said order, the present revision is filed as the Court below failed to exercise the jurisdiction vested on it and prayed to set aside the impugned order.

During hearing, Sri J.Prabhakar, learned counsel for the petitioners contended that there is a serious dispute between the parties regarding boundaries, which is to be adjudicated effectively only in the presence of the petitioners and that the petitioners underwent treatment for their ailment, the cause shown by the petitioners is sufficient cause as the same is beyond their control, prayed to set aside the order by condoning the delay of '92' days in filing petition under Order IX Rule 13 of C.P.C.

Learned counsel for the respondents argued in support of the order passed by the Court below.

As seen from the material on record, the reason assigned by the petitioners for their failure to file application under Order IX Rule 13 of C.P.C. within the prescribed time is that they were suffering from "Rhumatic Orthorities Gypospadias" and the Testicles are undescended and Maldeveloped Pyrixa, Disease", which prevented them from filing the petition before the Court within the time prescribed under the Limitation Act.

There is a serious dispute between the parties regarding boundaries and the petitioners are prevented from sufficient cause, which is beyond their control, the delay of '92' days in filing the petition under Order IX Rule 13 of C.P.C. is condoned subject to payment of costs of Rs.1,000/- (Rupees One thousand only) to the

respondents within one week from today and in the event of failure to pay costs, the petition shall stand dismissed automatically.

At this stage, today, in open Court, learned counsel for petitioners paid costs as ordered by this Court to the learned counsel for the respondents and receipt of the same was acknowledged by the learned counsel for the respondents orally.

In the result, the revision petition is allowed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

30.01.2018
Ksp

JUSTICE M. SATYANARAYANA MURTHY

