

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

C.R.P.No.2778 of 2018

ORDER:

Aggrieved by the dismissal of an application for condonation of delay in seeking to set aside the ex parte decree, the father has come up with the above revision petition.

2. Heard Mr. Sai Gangadhar Chamorthy, learned counsel for the petitioner and Mr. P. V. Venkata Ravi Sankar, learned counsel for the respondents.

3. According to the petitioner the delay was only 58 days. But according to the respondents the delay was 180 days. But before the Court below the matter proceeded on the footing that the delay is only 58 days. In the counter affidavit to the delay condonation petition, the counting of number of days of delay was not contested.

4. the main opposition of the respondents to the application for condonation of delay was (1) that despite service of summons by the Court amin, the petitioner did not appear, but took a false plea as though summons were served later; and (2) that every day delay was not explained.

5. Accepting the contentions of the respondents, the Court below dismissed the application for condonation of delay. Hence, the father has come up with the above revision.

6. The specific case of the petitioner was that when he came to Court to appear for a proceeding under Section 498-A, instituted by his wife, he was served with suit summons. Therefore, the petitioner calculated the delay as 58 days from the date of service of summons.

7. But according to the respondents, the Court aamin served summons much earlier at the residence of the petitioner. However, it is seen from the order of the Court below that what was refused to be received by the petitioner was an order of attachment in I.A.No.84 of 2017. Therefore, the same cannot be taken to be a refusal to receive the suit summons. Insofar as suit summons are concerned, even according to the respondents, the suit summons were affixed on the door of the house.

8. Therefore, being a matter between the children and the father, especially in relation to partition, the Court should not have adopted a pedantic approach. The delay was not so huge as to indicate any dilatory tactic.

9. Therefore, the revision is allowed and the impugned order is set aside and the delay is condoned. Taking into account the fact that the respondents are minor children of the petitioner, the petitioner shall pay costs of Rs.3000/- to the respondents, within two weeks of receipt of a copy of this order. The money shall be deposited before the Court below and the respondents are permitted to withdraw the same. If the petitioner fails to deposit the costs as awarded, the condone delay application will stand dismissed. There shall be no order as to costs.

10. As sequel, miscellaneous petitions pending in this revision, if any, shall stand closed.

JUSTICE V. RAMASUBRAMANIAN

29th June, 2018
Js.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

C.R.P.No.2778 of 2018



29th June, 2018

Js.