

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.3884 of 2018

ORDER:

This Civil Revision Petition is filed assailing the order dt.08-06-2018 in I.A.No.28 of 2013 in O.S.No.187 of 2008 of the Principal Senior Civil Judge, Tirupati.

2. The petitioners herein are defendant Nos.9 to 11 in the suit.
3. The 1st respondent filed the said suit for partition of the plaint schedule properties and for allotment of 1/16th share to him and for delivery of possession thereof.
4. Petitioners herein were arrayed as parties in the suit and received summons in the suit. Thereafter they did not file written statement. They were set *ex parte* and an *ex parte* decree was pronounced on 03-07-2009.
5. 1188 days thereafter, petitioners filed an application under Order IX Rule 13 C.P.C. to set aside the *ex parte* decree and also I.A.No.28 of 2013 under Section 5 of the Limitation Act, 1963 to condone the delay of 1188 days in filing the petition to set aside the *ex parte* decree dt.03-07-2009.
6. In the affidavit filed in support of the said application, the only reason assigned by petitioners is that their father died on 25-02-2008, which caused them shock and due to deep depression, petitioners could not contact their Advocate to file written statement and contest

the suit. It is further stated that the 2nd petitioner fell sick for some time, that the other petitioners were with him in hospitals, and thereafter he got promotion and got transferred to different places. It is alleged that the other defendants acted collusively with the 1st respondent/plaintiff and got an *ex parte* decree passed.

7. Counter-affidavit was filed by 1st respondent/plaintiff opposing condonation of delay. It is pointed out that the suit was filed on 22-04-2008, that all the defendants were served; petitioners remained *ex parte* and preliminary decree was passed on 03-07-2009; thereafter I.A.No.2070 of 2012 was filed for passing a final decree; and thereafter the instant application is filed seeking condonation of inordinately long delay of 1188 days. It is also stated that the father of petitioners was not a party to the suit and the suit was filed after he died. It is contended that all the defendants including the petitioners had full knowledge about the suit, but they did not chose to participate therein and abandoned contest, which resulted in passing of the *ex parte* decree.

8. By order dt.08-06-2018, the Court below dismissed I.A.No.28 of 2013. It took note of the fact that the period or length of delay is not important but the cause for the delay is to be looked into. It took note of the fact that the petitioners had engaged an Advocate, who file vakalat on their behalf, but did not file written statement within 90 days and were set *ex parte*. Having allowed the *ex parte* decree to be passed, they kept quiet till final decree proceedings were initiated by

1st respondent. It held that since petitioners were negligent in prosecuting their suit by deliberately not contesting it, they are not entitled to any indulgence.

9. Assailing the same, this Revision is filed.

10. Learned counsel for petitioners contends that the suit being one for partition, substantial stakes of petitioners are involved and the Court below ought to have accepted the explanation offered by petitioners for the delay in seeking to set aside the *ex parte* decree instead of dismissing the application. He also reiterated that there was collusion between 1st respondent/plaintiff and other defendants and only on account of shock and depression caused by the death of petitioners' father, who was looking after the Court cases, written statement was not filed.

11. It is incredible to believe that petitioners continued to be under shock from the date of death of their father on 25-02-2008 till 06-10-2012 when the application was filed. It is not in dispute that the 2nd petitioner is a Teacher and he even got promotion in the intervening period. Having engaged a counsel, who even filed vakalat, it was incumbent on the part of petitioners to brief the counsel and get the written statement filed. Without doing so, deliberately they allowed an *ex parte* decree to be passed.

12. In this view of the matter, I am of the view that the Court below did not commit any error in refusing to condone the inordinately long delay of 1188 days in filing application to set aside the *ex parte*

decree dt.03-07-2009 in O.S.No.187 of 2008 by dismissing I.A.No.28 of 2013.

13. The Civil Revision Petition fails and it is accordingly dismissed at the stage of admission. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 17-07-2018

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