

HON'BLE SRI JUSTICE N.BALAYOGI

CIVIL REVISION PETITION No.4024 of 2012

ORDER:

Heard the learned counsel for the petitioner. In spite of posting the Civil Revision Petition under the caption 'for Orders', none appeared for the respondents. Hence, the Civil Revision Petition is disposed of.

2. This Civil Revision Petition is filed against the order dated 05.07.2012 passed in I.A.No.226 of 2011 in O.S.No.130 of 2007 on the file of Junior Civil Judge, Chevella, Ranga Reddy District.

3. I.A.No.226 of 2011 is filed under Section 5 of the Limitation Act to condone the delay in filing application to set aside default order dated 12.11.2010 passed in O.S.No.130 of 2007.

4. Now the point that arises for determination is, "whether the petitioner has shown sufficient cause for such delay and the order of the Trial Court can be sustained."

i). The contention of the learned counsel for the petitioner is that since CMA was pending and, due to ill-health of petitioner, he could not attend and prosecute the matter.

ii). In the counter, the respondents herein contended that the petitioner herein has not explained day-to-day delay as

such both the CMA and revision before the Joint Collector were dismissed.

5. The record further shows that the petitioner filed the suit for partition and separate possession of the suit schedule property. The said suit was posted for the evidence of petitioner on 12.11.2010, on which date, the petitioner – plaintiff fell sick and unable to attend the Court and also could not intimate the same to his counsel. Further, the counsel for the petitioner could not attend Court on 12.11.2010 as he was held up in the District Court at LB Nagar, RR District.

6. The Trial Court recording a finding that the petitioner has not filed medical certificate showing that he fell ill. The counsel engaged in another Court is not a valid ground and dismissed the application with costs.

7. The only contention of the respondents is that the petitioner has not explained day-to-day delay.

8. It is settled law that though the petitioner need not explain the day to day delay but the petitioner has to show sufficient cause for the delay. The Trial Court, without considering the fact that the suit is for partition and petitioner's absence was due to his illness and his counsel being engaged in another Court, dismissed the petition. The order of the Trial Court is perverse. By setting aside the order under revision, no prejudice would be caused to the respondents. I find sufficient

cause to condone the delay in preferring application to set aside the default order dated 12.11.2010.

9. Accordingly, the Civil Revision Petition is allowed, while setting aside the order dated 05.07.2012 passed in I.A.No.226 of 2011 in O.S.No.130 of 2007 on the file of Junior Civil Judge, Chevella, Ranga Reddy District and condoning delay.

10. Miscellaneous petitions, if any, pending, shall stand closed.

Dt:04.12.2018
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N.BALAYOGI,J