

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

**CIVIL REVISION PETITION No.4473 OF 2018**

**ORDER:**

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 25.04.2018 passed in I.A.No.186 of 2017 in H.M.O.P.No.40 of 2015 on the file of the Court of the Senior Civil Judge at Wanaparthy.

2. Heard the learned counsel for the petitioner.

3. A perusal of the record reveals that the petitioner filed H.M.O.P.No.40 of 2015 on the file of the Court of the Senior Civil Judge at Wanaparthy, under Section 13(1)(ia) of the Hindu Marriage Act, against the respondent for dissolution of the marriage. The trial Court passed an *ex parte* decree on 04.02.2016. The respondent filed I.A.No.186 of 2017, under Section 5 of the Limitation Act, to condone the delay of 459 days in filing a petition to set aside the *ex parte* decree. The trial Court, after affording a reasonable opportunity to both parties, allowed the petition. Hence, the revision.

4. Now the point that arises for consideration in this revision is:

“Whether there is any illegality, irregularity or impropriety in the impugned order?”

5. A perusal of the record reveals that the petitioner filed H.M.O.P.No.40 of 2015 for dissolution of the marriage. In spite of service of notice, the respondent did not choose to appear before the trial Court in H.M.O.P.No.40 of 2015. The trial Court, having no other alternative, passed the *ex parte* decree on 04.02.2016.

The respondent filed I.A.No.---- of 2017, under Order IX Rule 13 C.P.C., to set aside the *ex parte* order dated 04.02.2016. The respondent also filed I.A.No.186 of 2017, under Section 5 of the Limitation Act, to condone the delay of 459 days in filing a petition to set aside the *ex parte* decree. The petitioner filed a counter in I.A.No.186 of 2017 opposing the petition. It is needless to say that the Court has to consider whether the person, who filed an application under Section 5 of the Limitation Act, has assigned the reasons much less cogent and valid reasons to condone the delay. In the instant case, there is a delay of 459 days in filing the application. The trial Court allowed the application on the sole ground that the respondent did not marry second time. When the petition is filed under Section 5 of the Limitation Act, the Court has to consider whether the petitioner has offered explanation much less cogent and valid explanation for non-filing of the petition within a period of limitation. The Court has to give a specific finding on that aspect. The trial Court without giving a specific finding whether the respondent has assigned reasons much less cogent and valid reasons to condone the delay allowed the petition on some other grounds. If the order of the trial Court is allowed to stand, certainly it would amount to miscarriage of justice.

6. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that it is a fit case to remand the matter to the trial Court.

7. In the result, the Civil Revision Petition is allowed setting aside the order dated 25.04.2018 passed in I.A.No.186 of 2017 in

H.M.O.P.No.40 of 2015 on the file of the Court of the Senior Civil Judge at Wanaparthi and remanding the matter to the trial Court. The trial Court is hereby directed to pass orders in I.A.No.186 of 2017 afresh after giving a reasonable opportunity to both parties to put forth their submissions. There shall be no order as to costs.

8. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

**T.SUNIL CHOWDARY, J**

Date: 03.08.2018  
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