

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.4984 OF 2018

ORDER
(Per Sri Justice Sanjay Kumar)

The petitioner is the plaintiff in O.S.No.760 of 1996 on the file of the learned I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar. He filed the said suit for cancellation of the registered sale deed dated 22.10.1996; partition and separate possession; and a perpetual injunction. A preliminary decree was passed in the said suit on 27.12.2004 cancelling the registered sale deed dated 22.10.1996 to the extent of the half-share of the plaintiff and holding him entitled to one out of the two equal shares in the A and B schedule properties and restraining the defendants from changing the nature of the said properties. Costs were also awarded to the plaintiff, but the relief sought by him in relation to mesne profits was rejected.

I.A.No.2127 of 2005 was filed by the petitioner-plaintiff for a final decree in terms of the preliminary decree dated 27.12.2004, by partitioning the A and B schedule properties by metes and bounds and for allotment and delivery of his half share therein. The said I.A. came to be dismissed for default on 30.09.2011 on the ground of non-appearance of the petitioner-plaintiff. He thereupon filed I.A.No.61 of 2016 in I.A.No.2127 of 2005 in O.S.No.760 of 1996 seeking condonation of the delay of 1557 days in filing a petition to set aside the dismissal order dated 30.09.2011 passed in I.A.No.2127 of 2005 in O.S.No.760 of 1996; to set aside the said order; and to consequently restore I.A.No.2127 of 2005 in O.S.No.760 of 1996. However, by order dated 12.07.2018, the trial Court dismissed the I.A. Aggrieved thereby, he is before this Court.

Despite service of notice, respondents 1 and 5 to 8 did not choose to enter appearance before this Court. Respondent 2 is deceased and Respondents 3 and 4 are shown as not necessary parties to this revision.

Heard Sri P.Shiv Kumar, learned counsel for the petitioner-plaintiff.

Perusal of the order under revision reflects that the trial Court was of the opinion that the petitioner-plaintiff failed to explain the reasons for the delay on a day-to-day basis. It is on this reasoning that the trial Court opined that he had failed to show sufficient cause for condonation of the delay and accordingly dismissed the I.A.

The affidavit filed in support of the I.A. demonstrates that the petitioner-plaintiff stated that his daughter, who is visually impaired, secured a job as a Lecturer at the Government Degree College, Aleru, Nalgonda District, and he shifted his family to Aleru owing to this fact. He further stated that prior to his daughter securing employment, he fell sick in the first week of September, 2011 due to a liver infection/jaundice and was under Ayurvedic treatment. He claimed that he had become very weak and was confined to the bed for a long time.

It is well settled that the Court should not adopt a dogmatic approach while dealing with a condone delay application. The *bonafides* underlying such an application would have to be examined by the Court. Technical insistence on explanation of the delay on a day-to-day basis as a matter of course would be highly pedantic and defeat the very purpose of vesting the Court with the power to condone delay in deserving cases. That apart, the trial Court ought to have been mindful of the fact that the subject application, which was dismissed for default, was one for passing of a final decree. It is the duty of the Court to pass a final decree in terms of a preliminary decree but the trial Court completely lost sight of this

aspect. Reference in this regard may be made to the observations of the Supreme Court in SHUB KARAN BUBNA ALIAS SHUB KARAN PRASAD BUBNA V/ s. SITA SARAN BUBNA¹:

'31. Insofar as final decree proceedings are concerned, we see no reason for even legislative intervention. As the provisions of the Code stand at present, initiation of final decree proceedings does not depend upon an application for final decree for initiation (unless the local amendments require the same). As noticed above, the Code does not contemplate filing an application for final decree. Therefore, when a preliminary decree is passed in a partition suit, the proceedings should be continued by fixing dates for further proceedings till a final decree is passed. It is the duty and function of the court. Performance of such function does not require a reminder or nudge from the litigant. The mindset should be to expedite the process of dispute resolution.'

This being the legal position, the trial Court ought not to have adopted a purely technical approach while dealing with the condone delay petition filed in the process of seeking restoration of a final decree application.

The order under revision is accordingly set aside and I.A.No.61 of 2016 in I.A.No.2127 of 2005 in O.S.No.760 of 1996 is ordered.

The civil revision petition is allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

6th DECEMBER, 2018

PGS

¹ (2009) 9 SCC 689