THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

Civil Revision Petition No.5899 of 2018

ORDER:

Mr.Nethikar Jairaj, the petitioner, has challenged the legality of the order, dated 08.08.2018, in I.A.No.181 of 2018 in O.S.No.1430 of 2003, passed by the VII Senior Civil Judge, City Civil Court, Hyderabad, whereby the learned Judge has dismissed the petitioner's application, filed under Section 5 of the Limitation Act, seeking condonation of delay of 442 days in filing the petition.

Briefly, the facts of the case are that the respondent Nos.1 to 6, the plaintiffs, filed a partition suit namely O.S.No.1430 of 2003. A preliminary decree in the said suit was passed on 23.03.2004. After passing of the final decree, and even after receiving summons in I.A.No.350 of 2016, the petitioner did not file any petition before the Court. Eventually, when the petition is filed, it was delayed by 442 days. In order to seek condonation of the said delay, the petitioner filed an application under Section 5 of the Limitation Act. However, by the impugned order, the learned Judge has dismissed the said application. Hence, this revision petition before this Court.

Mr.A.Venkatesh, the learned counsel for the petitioner, has pleaded that since the entire suit was based on fraud, and fraud unraveling the decree, the delay of 442 days should have been condoned. Therefore, the impugned order deserves to be set aside by this Court.

On the other hand, Mr. M. Praveen Kumar, the learned counsel for the respondent Nos.1 to 6, the plaintiffs, submits that

even before the Court can enter into the question whether the fraud has been played or not, or enter into an issue whether the decree was unraveled or not, the petitioner has to over-come the delay of 442 days by offering a sufficient cause for the said delay. However, in the present case, according to the learned counsel for the respondent No.1 to 6-plaintiffs, no such explanation was offered. Therefore, the learned trial court was justified in dismissing the application for condonation of delay. Hence, the learned counsel for the respondent No.1 to 6, the plaintiffs, has supported the impugned order.

Heard learned counsel for the parties and perused the impugned order.

A bare perusal of the impugned order clearly reveals that the petitioner had stated that he did not pursue the civil suit, as a promise was made by the plaintiff No.1 that he would withdraw the suit. However, even after receiving the summons in I.A.No.350 of 2016, the petitioner did not file the application till a delay of 442 days. Interestingly, the petitioner did not offer any explanation for the said delay of 442 days. Even before this Court, no sufficient cause has been shown by the petitioner for the said delay.

It is, indeed, trite to state that even before a Court can enter into the merits of the case, if the petition is hit by limitation, and the delay sought to be condoned, the issue before the Court would be, whether a sufficient cause has been shown for seeking condonation of delay or not? For, it is not the length of the delay, but the sufficiency of the delay which is material. In case no sufficient cause is shown, the Court would be justified in

dismissing the application filed under Section 5 of the Limitation Act seeking condonation of delay.

Therefore, before the learned Judge could have entered into the issue, whether fraud was played or not, the learned Judge was required to consider whether sufficient cause for condonation of delay was offered or not. Since, in the present case, no sufficient cause was shown for the delay of 442 days, the learned Judge was certainly justified in dismissing the application filed under Section 5 of the Limitation Act.

For the reasons stated above, this Court does not find any illegality or irregularity in the impugned order warranting interference by this Court. The Civil Revision Petition is devoid of any merit; it is, hereby, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

RAGHVENDRA SINGH CHAUHAN, J.

Date:28.12.2018.

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