

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**C.R.P.No.6367 OF 2017**

**ORDER:**

This revision petition is filed under Article 227 of the Constitution of India challenging the order dated 23.06.2017 in I.A.No.1180 of 2014 in I.A.No.570 of 2008 in O.S.No.53 of 1993 passed by the Senior Civil Judge, Khammam dismissing the petition filed under Section 5 of the Limitation Act to condone delay of 152 days in filing the petition to set aside abatement order occasioned on account of the death of the 2<sup>nd</sup> defendant in bringing his legal heirs.

The petitioner/plaintiff filed suit for partition of schedule property and for other consequential reliefs. Preliminary decree was passed by the Court below on 31.03.2001 and later filed a petition for passing of final decree under Order XX Rule 18 read with Section 151 C.P.C. in I.A.No.570 of 2008. During pendency of the said petition, the 2<sup>nd</sup> respondent/defendant died on 27.12.2013 and the said fact was informed to the Court by the counsel for the respondents by filing memo, in compliance of Order XXII Rule 10-A C.P.C. Immediately the petitioner filed a petition under Order XXII Rule 4 C.P.C to implead legal heirs of the deceased 2<sup>nd</sup> defendant along with applications to set aside the abatement order and to condone delay in filing the petition, to set aside abatement order under Section 5 of the Limitation Act, contending that the legal heirs are residing at Khammam. Whereas the petitioner is residing at Hyderabad and thereby he could not trace the address of the legal heirs of the deceased and consequently occasioned delay of 152 days in filing the petition to

set aside the abatement order under Order XXII Rule 9 C.P.C and requested this Court to condone the delay of 152 days in filing the petition.

The respondent did not file any counter, but the Court below after considering the material on record dismissed the petition holding that the cause shown by the petitioner is not sufficient, which prevented the petitioner from filing the petition.

Aggrieved by the same, the present revision is filed mainly on the ground that when substantial rights are involved and the petitioner was prevented by cause, which is beyond his reasonable control, the Court can exercise power under Section 5 of the Limitation Act to condone the delay, unless the delay was caused intentionally. But the Court below did not exercise jurisdiction vested on it and committed an error in dismissing the petition and prayed to dismiss the petition.

Notice sent to the respondent, returned with an endorsement "refused: and the same is filed into the Court. Hence, service on respondent is held sufficient.

The only reason assigned by the petitioner for condonation of delay of 152 days is that the petitioner is residing at Hyderabad in connection with employment, whereas the legal heirs of the deceased are residing at Khammam and thereby he could not trace their addresses. Undoubtedly, learned counsel for the 2<sup>nd</sup> respondent filed memo in compliance of Order XXII Rule 10-A C.P.C. intimating about the death, but did not disclose the details of legal heirs and addresses as required under Rule 10-A of Order XXII C.P.C., thereby, he could not trace the addresses of the legal

heirs of the deceased. As such the cause shown is sufficient to condone the delay, which was beyond his control. It is settled law that while deciding application filed under Section 5 of the Limitation Act, the Court has to construe the cause shown by the petitioner liberally without adopting pedantic approach, but the Court below did not exercise such discretionary jurisdiction that vested on it and hence, this Court can exercise power under Section 115 C.P.C or under Article 227 of the Constitution of India and set aside such order with a view to decide the real controversy between the parties involving substantial rights of both parties. Therefore, taking into consideration of facts and circumstances of the case, the delay of 152 days in filing the petition is allowed setting aside the order dated 23.06.2017 in I.A.No.1180 of 2014 in I.A.No.570 of 2008 in O.S.No.53 of 1993 passed by the Senior Civil Judge, Khammam.

With the above direction, the civil revision petition is allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

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**M. SATYANARAYANA MURTHY,J**

02.02.2018  
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