

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.08.2019

PRONOUNCED ON : 29.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

C.M.P.No.14191 of 2019

in

A.S.Sr.No.71170 of 2019

N.Ravikanth

...
Vs.

Petitioner

1.N.Kesavalu Chetty
2.N.Jothilakshmi

...

Respondents

Prayer :- The Civil Miscellaneous Petition has been filed under Section 5 of the Limitation Act, to condone the delay of 715 days in filing the First Appeal against O.S.No.6409 of 2014 on the file of the XVIII Additional City Civil Court, Chennai.

For Petitioner : Mr.V.S.Mannar Samy

For Respondent : Mr.A.Thiyagarajan
No.1

For Respondent : Mr.M.Guruprasad
No.2

ORDER

The Civil Miscellaneous Petition has been laid to condone the delay of 715 days in preferring the first appeal.

2.The suit in O.S.No.6409 of 2014 has been laid by the first respondent for partition and the petitioner had contested the abovesaid suit and accordingly, based on the materials placed on record and the submissions made, the preliminary decree has come to be passed in the abvoesaid suit on 19.01.2017 allotting one share in the suit property in favour of the first respondent. It is found that following the passing of the preliminary decree, the first respondent had preferred the application for final decree and sought for the appointment of an advocate commissioner for suggesting the mode of division of the suit property as per the terms of the preliminary decree. It is found that in the abovesaid application, notice has been ordered to the opposite parties including the petitioner and the petitioner had received the same and entered into appearance and thereafter, the advocate commissioner has been appointed and the advocate commissioner had inspected the suit property and filed his report and plan. As per the commissioner's report, inasmuch as the suit property could not be divided into three equal shares, accordingly, it is found that the application had been laid for seeking permission to sell the suit property by way of public auction so as to divide the sale profits equally amongst the sharers and it is also seen that the notice has been received by the petitioner in the abovesaid application and in fact, the petitioner has also made an endorsement putting no objection and accordingly, the abvoesaid application came to

be entertained by the Court concerned and thereafter, the warrant had been issued to the advocate commissioner to fix the upset price and sell the suit property in public auction. It is further seen that the advocate commissioner has to inspect the suit property and fix the upset price and conduct the public auction. At that point of time, it is found that the petitioner has represented that he intends to prefer an appeal against the preliminary decree passed in the suit and accordingly, the present petition has been laid by the petitioner for the condonation of the delay of 715 days in preferring the first appeal.

3.The reasons given by the petitioner for the delay are that his counsel had not properly guided him in the matter and further, as he was taking treatment for diabetes and low pressure, he was not able to contact his counsel and thereby, the delay had occurred in preferring the appeal.

4.The abovesaid reasons projected by the petitioner for the delay had been stoutly disputed by the respondents by filing separate counters. As rightly contended by the respondents, the contention of the petitioner that his counsel had not guided him in the matter and thereby, the delay had occurred, as such, cannot be accepted. When it is found that the petitioner had been, all along, been represented by his counsel before the trial Court before passing the preliminary decree and thereafter also at

the stage of the final decree application and also at the stage, when the suit property is brought for sale by way of public auction, in such view of the matter, when the petitioner is found to be represented through his counsel and accordingly, he had been taking part in the proceedings and also put forth no resistance to the endeavours of the first respondent for passing the final decree in accordance with law, in such view of the matter, the reason projected by the petitioner that he has been misled by his counsel in the matter and thereby, the delay had occurred in challenging the preliminary decree cannot at all be countenanced in any manner.

5.The other reason given by the petitioner for the delay is that as he was taking treatment for diabetes and low pressure, he was unable to contact his counsel. However, as rightly contended by the respondents, when it is seen that the petitioner had been challenging the suit as well as the final decree application levied by the first respondent throughout his case that due to illness, he was unable to contact his counsel and thereby, the delay had occurred in preferring the appeal against the preliminary decree cannot at all be accepted in any manner. As rightly contended by the respondents, the abovesaid reason is projected only for the purpose of dragging the proceedings without any basis and accordingly, it is found that the petitioner is unable to place any material to substantiate the same even prima facie.

6. In the light of the abovesaid discussions, it is evident that the sole aim of the petitioner is to prevent the respondents from enjoying the fruits of preliminary decree passed in the matter and thereby, delay the proceedings endlessly. In such view of the matter, it is found that the petitioner is not able to place any acceptable cause for the huge and inordinate delay and as abovenoted, when the reasons projected by the petitioner for the same are not acceptable in any manner and also not substantiated by the petitioner with reliable and convincing materials even prima facie, in such view of the matter, I am not inclined to accept the same. It is found that, as rightly put forth by the respondents, the petitioner has not projected any sufficient cause for the condonation of the huge and inordinate delay.

7. In the light of the abovesaid discussions, the petition is found to be devoid of merits and accordingly, the same is dismissed with costs. Consequently, A.S.Sr.No.71170 of 2019 is rejected.

Index : Yes / No
Internet : Yes / No
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29.08.2019

To

The Section Officer, V.R.Section, High Court, Madras.

T.RAVINDRAN, J.

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**Pre-Delivery Order made
in C.M.P.No.14191 of 2019
in
A.S.Sr.No.71170 of 2019**

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