

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.649 of 2017

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.13-10-2016 in I.A.No.452 of 2016 in O.S.No.1241 of 2004 of the V Senior Civil Judge, City Civil Court, Hyderabad.

2. Petitioners herein are defendants in the said suit.
3. The 1st respondent/plaintiff initially filed the suit against petitioners for partition of the plaint schedule property into 4 equal shares, for allotment of one such share to him, for future mesne profits and for permanent injunction etc.
4. After filing the suit, he died on 14-12-2011.
5. On 28-03-2016, more than 4 years after the said event, the widow and four sons of deceased plaintiff filed I.A.No.452 of 2016 to condone the delay of 1534 days in filing application to set aside abatement caused on account death of 1st respondent and to come on record in the suit.
6. In the said I.A., affidavit was filed by 2nd respondent herein, who is widow of the deceased plaintiff. She stated that her husband's death caused shock to her and her children and led to mental stress; that she was under medical treatment for the previous 4 months; and

as soon as she recovered from the same as well as chronic diseases of sugar and Blood Pressure, she filed the said application. She alleged that there was no negligence or deliberate intention on her part in not filing application to bring the respondent Nos.2 to 5 on record as legal representatives of the deceased plaintiff.

7. This application was opposed by petitioners, who contended that sufficient cause has not been shown for condonation of the said period of delay. It was denied that respondent Nos.2 to 5 are the only legal heirs of the deceased plaintiff. They contended that there is utter negligence and lack of promptitude on the part of the 2nd respondent in filing this application.

8. By order dt.13-10-2016, the said application was allowed by the Court below on payment of costs of Rs.1,000/- to the petitioners.

9. The Court below observed in the said order that though the 2nd respondent was aware that earlier applications had been filed on 11-04-2012 to bring respondent Nos.2 to 5 on record as legal representatives of the deceased plaintiff, the said petitions were missing from the file of the Court below, and there is no material to show that such applications were filed at all and were returned as is contended by the 2nd respondent. It observed the laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial real justice; that procedure has always been a handmaid of justice and rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of

law. It held that the reasons assigned by respondent Nos.2 to 5 for the delay in filing the application to come on record cannot be said to be unbelievable and unreasonable. It observed that it would amount to miscarriage of justice, since the suit is for partition.

10. Assailing the same, this Revision is filed.

11. Learned counsel for petitioners contended that the Court below erred in condoning the inordinate period of delay of 1534 days in filing application to set aside abatement in the suit, and that no valid reasons have been given to condone the said period of delay. It is further pointed out that 2nd respondent had 4 sons, all of whom claimed to be engaged in business, and no explanation is forthcoming why sons of the 2nd respondent could not take any steps to come on record.

12. Learned counsel for respondent Nos.2 to 5 stated that the costs directed to be paid by the Court below have been received by the counsel for petitioners in the Court below, and even produced a docket order dt.15-11-2016 passed by the Court below recording the payment of costs to the counsel for petitioners allegedly.

13. A reading of the said order does not mention the name of the counsel to whom the costs were paid. The preamble to the said order mentions one Venkata Ratnam as counsel for petitioner Nos.1 and 2. But it is admitted fact that the said Venkata Ratnam died long back and that petitioners are now represented by Sri A.Hanumantha Reddy

and Sri B.Krishna Reddy. No receipt allegedly issued by the counsel for petitioners acknowledging receipt of the amount of costs is produced by respondent Nos.2 to 5.

14. When there is a serious dispute about receipt of the said costs by petitioners, I am not inclined to accept the said docket order dt.15-11-2016 passed by the Court below as evidence of payment of costs to the counsel for petitioners in the Court below.

15. While the 2nd respondent may be aged 80 years and probably had difficulty in contacting a counsel, no such excuse can be given by her sons, who are admittedly above 55 years of age at the time of filing of I.A.No.452 of 2016. In any event, having high Blood Sugar or Blood Pressure cannot be said to be serious illnesses which would prevent respondent Nos.2 to 5 from taking steps to contact an Advocate for filing application to come on record in the suit.

16. The Supreme Court in **Balwant Singh Vs. Jagdish Singh**¹ had laid down how to exercise discretion in applications for condonation of delay as under:

“23.

25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation.

¹ (2010) 8 SCC 685

26. *The law of limitation is a substantive law and has definite consequences on the right and obligation of party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.*

17. This has been followed in **Lanka Venkateswarlu (Dead) by LRs Vs. State of Andhra Pradesh and others**² by another Division Bench of the Supreme Court and it was held:

“28. ... *The concepts such as ‘liberal approach’, ‘justice oriented approach’, ‘substantial justice’ cannot be employed to jettison the substantial law of limitation. Especially, in cases where the court concludes that there is no justification for the delay.*”

18. In the facts and circumstances of the instant case, I am of the opinion that sufficient cause has not been shown by respondent Nos.2 to 5 for condoning the inordinate period of delay of 1534 days for filing application to come on record.

19. Accordingly, the Civil Revision Petition is allowed; the order dt.13-10-2016 in I.A.No.452 of 2016 in O.S.No.1241 of 2004 of the

² (2011) 4 SCC 363

V Senior Civil Judge, City Civil Court at Hyderabad is set aside and the said I.A. is dismissed. No costs.

20. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-08-2019

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