

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.670 OF 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the revision petitioner/plaintiff aggrieved by the docket order, dated 10.10.2017, passed in I.A.No.1104 of 2015 in O.S.No.861 of 2007 by the I Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar, wherein the Court below has dismissed the subject Interlocutory Application filed by the revision petitioner/plaintiff, under Section 5 of the Limitation Act, 1963, seeking to condone the delay of 313 days in filing the application for restoration of the subject Suit, which was dismissed for default on 19.01.2015.

2. Heard learned counsel for the revision petitioner/plaintiff and the learned counsel for respondent Nos.1, 3 and 7 and perused the record.

3. Learned counsel for the revision petitioner/plaintiff would submit that the subject Suit is filed for partition and separate possession of the suit schedule property. In the said Suit, the revision petitioner/plaintiff filed I.A.No.610 of 2009 seeking to implead respondent Nos.6 to 8 herein as defendant Nos.6 to 8 stating that they have purchased part of the suit schedule property. The said application was allowed. In view of the same, since it is necessary to amend the pleadings, I.A.No.1037 of 2013 was filed seeking to amend the plaint. The said application was allowed on 07.11.2014 and the matter was posted to 24.11.2014.

Since the revision petitioner/plaintiff's mother was suffering from ill-health, the revision petitioner/plaintiff could not carry out the amendment within the time stipulated. In the month of July, 2015, when he approached his Advocate, he came to know that the office of his Advocate was changed to another place and thereafter, he traced out his Advocate's office. At that time, he came to know that the subject Suit was dismissed for default on 19.01.2015. Therefore, the delay of 313 days had occurred in filing the application for restoration of the subject Suit. The delay is neither willful nor deliberate. It is due to the reasons assigned in the sworn affidavit filed in support of the subject Interlocutory Application. In the given circumstances, the Court below ought to have allowed the subject Interlocutory Application, as prayed for and ultimately, prayed to set aside the impugned order, dated 10.10.2017, and allow the subject Interlocutory Application, as prayed for.

4. Learned counsel for respondent Nos.1 and 3 would submit that no substantial reason has been assigned by the revision petitioner/plaintiff, so as to condone the delay of 313 days. The amendment was not carried out deliberately. Therefore, there are no justifiable grounds to allow the subject Interlocutory Application, as prayed for and ultimately, prayed to dismiss the revision petition.

5. Learned counsel for respondent No.7 would submit that since amendment is not carried out and the subject Suit is dismissed, respondent Nos.6 to 8/defendant Nos.6 to 8 are not necessary

parties to this revision petition. They ought not have been arrayed as party respondents in this revision petition and ultimately, prayed to dismiss the revision petition.

6. In view of the submissions made by both sides, the point that arises for determination is as follows:

“Whether the order, dated 10.10.2017, passed in I.A.No.1104 of 2015 in O.S.No.861 of 2007 by the I Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar, is liable to be set aside and consequently, delay of 313 days caused in filing the application for restoration of the subject Suit can be condoned?”

7. POINT: It is relevant to state that the subject Suit is filed for partition and separate possession of the suit schedule property. The revision petitioner/plaintiff, in the sworn affidavit filed in support of the subject Interlocutory Application, had specifically stated that I.A.No.1037 of 2013 was allowed on 07.11.2014 and the matter was posted to 24.11.2014 to carry out amendment and to file neat copy. Thereafter, the matter was adjourned from time to time till 19.01.2015. From the month of December, 2014, since his mother was suffering from ill-health, he could not contact his Advocate to carry out the amendment. When he approached his Advocate in the month of July, 2015, he came to know that the office of his Advocate was changed to another place and thereafter, he traced out his Advocate's office and at that time, he came to know that the subject Suit was dismissed on 19.01.2015. Therefore, the delay of 313 days had occurred. So, there is no deliberate or willful intention on the part of the revision

petitioner/plaintiff to protract the proceedings in the subject Suit. The substantial issues in the subject Suit are required to be adjudicated. It is contended that in a Suit for partition, if the amendment is not carried out, the Court has to dismiss the Interlocutory Application seeking amendment, for not carrying out the amendment in terms of the order passed in such Interlocutory Application. In view of the explanation given by the revision petitioner/plaintiff in the affidavit filed in support of the subject Interlocutory Application, there is justifiable cause/sufficient cause to condone the delay of 313 days. It is also made clear that since respondent Nos.6 to 8 herein are parties to I.A.No.1037 of 2013 and since the said application was allowed by the Court below, they gain substantial interest in the subject matter of the revision petition. Therefore, making them as party respondents in this revision petition cannot be faulted.

8. In the result, the Civil Revision Petition is allowed and the order, dated 10.10.2017, passed in I.A.No.1104 of 2015 in O.S.No.861 of 2007 by the I Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar, is set aside. Consequently, I.A.No.1104 of 2015 is allowed condoning the delay of 313 days caused in filing the application for restoration of the subject Suit.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

February 13, 2020.
MD