

HON'BLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No.2181 of 2019

ORDER:

This Civil Revision Petition is filed under Section 115 of C.P.C., aggrieved by the order dt.30.07.2019 in I.A.No.230 of 2018 in O.S.No.76 of 2016 passed by the Senior Civil Judge at Jangaon, Warangal District, dismissing I.A.No.230 of 2018 filed by the petitioner under Section 5 of the Limitation Act, praying to condone the delay of 206 days in filing the petition to set aside the *exparte* order dt.28.02.2018.

2. The petitioner herein is Defendant No.5 in the main suit O.S.No.76 of 2016, which was instituted praying to grant a decree of cancellation of the registered Sale Deed concerning the suit schedule property. Earlier, I.A.No.317 of 2016 in O.S.No.76 of 2016 was posted on 10.11.2016 after service of summons on respondent Nos.1 to 6. As there was no representation for respondent Nos.1 to 6 on the said date, I.A.No.317 of 2016 was directed to be listed on 27.12.2016, on which date the main suit was directed to be listed. On 27.12.2016 all the defendants were called absent. The trial Court, having satisfied that the service was completed and there was no representation on behalf of defendant Nos.1 to 5, set them *exparte*. Subsequently, the suit was decreed on 28.02.2018. Therefore, the petitioner/D.5 filed an application

I.A.No.230 of 2018 in O.S.No.76 of 2016 to condone the delay of 206 days in setting aside the *exparte* decree dt.28.02.2018.

3. On due consideration of the application filed by the petitioner, the trial Court found that though the petitioner pleaded that his grand-father died on 25.12.2016 and, therefore, he could not appear before the Court on 27.12.2016, no document was produced before the Court in proof of the said claim. The trial Court also noticed that even though the petitioner's grand-father stated to have died on 25.12.2016, but the suit was decreed on 28.02.2018 and the petitioner kept quiet for 14 long months till the suit was decreed without taking steps to pray to set aside the order setting him *exparte* and the instant application is filed with further delay of 206 days.

4. As briefly noted above, the fact remains that when I.A.No.317 of 2016 was listed on 10.11.2016, there was no representation on behalf of the petitioner and, therefore, I.A.No.317 of 2016 was directed to be listed along with the main suit on 27.12.2016. Assuming that the petitioner's father died on 25.12.2016, no steps were taken by the petitioner to set aside the said *exparte* order and the petitioner kept quiet till the suit was decreed and thereafter also the petitioner kept quiet for more than six months. In I.A.No.230 of 2018 filed by the petitioner to condone the delay of 206 days also, no explanation is furnished by the petitioner

as to why the petitioner could not take steps immediately praying to set aside the *exparte* order dt.28.02.2018, but only refers to the reasons for his non-appearance on 25.12.2016 i.e. on the ground of death of his grand-father.

5. No reasons are assigned in the affidavit filed in support of the application praying to condone the delay of 206 days in filing application to set aside *exparte* order dt.28.02.2018. Once a defendant is set *exparte* and suit is decreed, it is not a matter of course for defendant to seek to set aside *exparte* order, more particularly, when there is a delay in filing such application.

6. Though learned counsel for the petitioner sought to contend that since the delay is only 206 days, the trial Court ought to have condoned the said delay granting leave to the petitioner to contest the main suit on merits, I see no reason or error in the decision arrived at by the trial Court in I.A.No.230 of 2018. Further, the petitioner owes explanation for his marked silence for 14 long months after he was set *exparte* and allowed the suit to be decreed. Therefore, the issue cannot be confined to delay after suit was decreed.

7. Thus, I do not see any error in the order of the trial Court dt.30.07.2019 warranting interference by this Court.

8. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

9. Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

JUSTICE P. NAVEEN RAO

20.01.2020.
Msr



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DATED : 20.01.2020

Between :

Kondaboina Raju Yadav, s/o. Rajaiah,
Aged 28 years, R/o. Pembarthi (V),
Jangaon (M), Jangaon District.

... Petitioner

And

Gaddam Ramchandram,
s/o. Venkataiah, aged 62 years,
R/o. Kamalayapally (V), Maddur (M),
Siddipet District and others.

... Respondents

The Court made the following :