

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 2645 OF 2019

ORDER:

This Civil Revision Petition is filed questioning the order dated 14.08.2019 passed by the learned Principal Junior Civil Judge-cum-Judicial Magistrate of First Class at Karimnagar, dismissing I.A.No.408 of 2014 in O.S.No.780 of 2004 filed by the petitioners under Section 5 of the Limitation Act to condone the delay of 109 days in filing the petition to restore the suit.

The aforesaid suit filed by the petitioners came to be dismissed for default on 29.10.2013. But, the petitioners filed the above said I.A. in 2014. The reasons stated for the delay in filing the restoration petition are that petitioner No.3 was working at Bangalore and he could not get leave, as such, he could not attend the Court to lead his side of evidence and that he has been recently transferred to Srirampur of Mancherial and immediately thereafter, he approached the Advocate and on enquiry he was informed that the suit was dismissed for default on 29.10.2013, in the process, the delay had occurred and it is on account of his ignorance. In the counter, the respondents while denying the genuineness of the reasons stated for condonation of delay, stated that the calculation made in respect of the delay of 109 days itself is wrong.

Before this Court, the petitioners filed the medical certificates dated 10.09.2013 and 30.08.2013 apart from discharge certificate

issued by the CISF Unit, SCCL, Singareni, discharging the petitioner from service on 30.11.2015.

Learned counsel for the respondents points out that the medical certificates produced by the petitioners were not part of the record and further, there is no material to support the claim of petitioner No.3 that he was unwell. He placed reliance on the judgments of this Court in **Smt.M.Shyamala Vs. The District Panchayat Officer, R.R. District and Another**¹ and **Mohd.Shakeel Ahmed and Another Vs. M/s.Pioneer Overseas Corporation of India**² and the Honourable Supreme Court in **University of Delhi Vs. Union of India and Others**³. He prays for dismissal of the revision.

Though the suit itself came to be filed in 2004 for partition, for one reason or the other, the suit was not disposed of till 2013, which cannot be attributed to the plaintiffs or the defendants. In the impugned order, the trial Court observed that the amendment petition filed by the defendants was dismissed on 12.02.2013.

The afore-stated judgments does not require much discussion for the reason that this Court is conscious of the fact that the suit is filed for partition of the ancestral property and is pending since nine years, as such, if the Court is satisfied that the reasons for such delay are plausible, it may take a liberal view to condone the delay.

¹ (2006) 3 APLJ 241

² (2014) 6 ALD 595

³ 2019 SCC OnLine SC 1634

This Court is not inclined to accept the certificates filed by the petitioners on account of the fact that the petitioners never chose to file the same before the trial Court and there is no authenticity with respect to the same, however, this Court can condone the delay putting the petitioners on some terms.

In those circumstances, the Civil Revision Petition is allowed and the order under revision is set aside. Consequently, I.A.No.408 of 2014 is allowed, subject to the petitioners-plaintiffs paying costs of Rs.8,100/- (Rupees Eight Thousand and One Hundred only) to the respondents-defendants. As the suit is of the year 2004, the trial Court taking into consideration the age of the parties, shall conduct trial on day-to-day basis and dispose of the suit within a period of four months from the date of receipt of a copy of this order.

Consequently, miscellaneous applications, if any shall stand closed.

CHALLA KODANDA RAM, J

Dt:14.02.2020

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