

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

C.R.P.No.1374 OF 2019

ORDER:

This civil revision petition under Section 115 CPC is directed against the order dated 01.04.2019 in I.A.No.34 of 2017 in O.S.No.22 of 2015, on the file of the Senior Civil Judge, Bodhan, wherein the said application filed by the petitioners-defendant Nos.1 and 2 under Section 5 of the Limitation Act seeking to condone the delay of 478 days in filing the petition to set aside the *ex parte* preliminary decree, was dismissed.

2. Heard the learned counsel for the petitioners and learned counsel for respondent No.2. Perused the record.

3. The petitioners and respondent No.1 herein are defendants in O.S.No.22 of 2015 filed by the respondent No.2-plaintiff for partition and separate possession. The said suit was decreed and an *ex parte* preliminary decree was passed on 01.09.2015. Subsequently, respondent No.2 filed I.A.No.233 of 2016 in the final decree petition seeking appointment of Advocate-Commissioner to divide the suit schedule property into four equal shares and pass a final decree. While so, the petitioners herein filed an application to set aside the *ex parte* preliminary decree

along with an application in I.A.No.34 of 2017 under Section 5 of the Limitation Act. Respondent No.2 resisted the same. On a consideration of the material on record, the trial Court dismissed the said application stating that the petitioners failed to show sufficient cause for condoning the delay of 478 days in filing the petition to set aside the *ex parte* preliminary decree and in view of the fact that I.A.No.233 of 2016 for passing of final decree was already filed and proceedings are in progress wherein defendants 1 and 2 have already received notices and contesting the same. The trial court further observed that the petitioners can set forth all their grievances in the said application. Challenging the same, the present revision is filed.

4. The undisputed facts are that respondent No.2 and petitioners 1 and 2 are brothers and sisters. Respondent No.2 filed the suit for partition of the joint family properties against the petitioners and respondent No.1 herein. The said suit was decreed and an *ex parte* preliminary decree was passed on 01.09.2015. dividing the properties into four equal shares and allocating one-fourth share in favour of respondent No.2. Subsequently, the present application in I.A.No.34 of 2017 was filed under Section

5 of the Limitation Act to condone the delay of 478 days in filing the petition to set aside the *ex parte* preliminary decree.

5. In the affidavit filed in support of the application in I.A.No.34 of 2017, the revision petitioners stated that they have received summons from the Court for appearance on 30.04.2015 and on that day, they appeared before the Court and engaged a counsel and the matter was posted for filing written statement. It is further stated that owing to ill-health and hospitalization of the first petitioner due to jaundice and other ailments of chest pain and breathing trouble, where he took treatment under the supervision of a doctor and the second petitioner attended on him and for the said reason, he could not contact their counsel to file written statement. However, the second petitioner was hale and healthy and when they engaged a counsel, the second petitioner ought to have taken steps in consulting the counsel and filing written statement in the suit, but he did not do so. The only reason mentioned is that the second petitioner is attending on the first petitioner for his medical treatment. Apart from that, the petitioners failed to produce any medical evidence to substantiate their contention that the first petitioner was undergoing treatment. Admittedly, the said

application to condone the delay of 478 days in filing the petition to set aside the *ex parte* preliminary decree, without showing sufficient cause and a mere statement that the first petitioner was suffering from ill-health and was unable to file written statement, is not a sufficient cause to condone such inordinate delay.

6. The trial Court had elaborately dealt with all the contentions raised by both the parties and rightly refused to condone the delay of 478 days, as the petitioners failed to show sufficient cause for such delay. I do not find any justifiable grounds to interfere with the impugned order refusing to condone the inordinate delay of 478 days in filing the petition to set aside the *ex parte* preliminary decree. The civil revision petition is liable to be dismissed.

7. In the result, the civil revision petition is dismissed. There shall be no order as to costs.

8. Miscellaneous petitions, if any pending, stand closed.

A.SANTHOSH REDDY, J

24.02.2023

Lrkm