

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

CRP.(NPD)No.2453 of 2015

K.R.Thangavel

...Petitioner

Vs

Ponnusamy

...Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C praying to set aside dated 21.04.2015 made in I.A.No.8 of 2015 in A.S.No.33 of 2013 on the file of the learned Principal Subordinate Judge, Erode by allowing this Civil Revision Petition.

For Petitioner : Mr.R.Prabakar

For Respondent :Mr.M.Guruprasad

सत्यमेव जयते

ORDER

As against the judgment and decree dated 25.03.2013 passed in O.S.No.718 of 2010, the petitioner herein had preferred an appeal in A.S.No.33 of 2013. When the appeal came to be dismissed for default on 20.09.2013, the petitioner herein has filed I.A.No.8 of 2015 dated 17.12.2014 under Section 5 of Limitation Act to condone the delay of 423 days in filing the application to

restore the appeal. The reason for the delay filed in the application is that the appellant suffering from Jaundice and bed ridden and therefore he could not contact his counsel and instruct him to argue the appeal. Court below while considering the reasonings had come to the conclusion that the delay has not been properly explained and that the medical ailment is the petitioner had chooses in his application is not supported by proper evidence and hence dismissed the application. As against the same, the present civil revision petition.

2. The learned counsel for the petitioner submitted that though he had assigned the reasonings for the inability to file the application for restoration within time, the Court below had not properly appreciated the same. According to the learned counsel, since the petitioner herein was taking country treatment, there was no document to substantiate his treatment and since he has a putforth valid case before the trial Court he is likely to succeed in the appeal also.

3. The learned counsel for the respondent on the other hand submitted that the plaint averments evidences that the suit properties are joint family properties and that the petitioner intended to file a partition suit. Till date, he has not taken steps and as such, there is no bona fide contention on the

merits of the case. Even otherwise, learned counsel submits that the first Appellate Court had properly appreciated the averments made in the application to condone the delay and had come to the findings that each and every day's delay has not been properly explained. As such, he sought for dismissal of the Civil Revision Petition.

4. I have given my careful consideration to submissions made by the respective counsel.

5. The only referred point in the application to condone the delay of 423 days in filing application to restore the appeal is that the petitioner was suffering from Jaundice and was taking medical treatment and as such, he would unable to instruct his counsel to conduct appeal.

6. I am unable to comprehend as to how this could be the reason for inordinate delay of 423 days. When the petitioner herein had already engaged a counsel for getting along with the partition suit, his alleged medical ailment may not be an impediment to file an application to restore in time. Even otherwise, a medical ailment for a period of 423 days raises a doubt on the inability of the petitioner to file an application within time.

M.S.RAMESH. J.,

dh

7. As such, the Court below was justified in seeking for documentary evidence in support of the medical ailment. I do not find infirmity in the order passed therein. Hence, Civil Revision Petition stands dismissed. No costs.

28.11.2018

Index: Yes/No
Internet: Yes/No
dh

To
The Principal Subordinate Judge,
Erode.



WEB COPY

CRP.(NPD)No.2453 of 2015