



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17/2/2015

C O R A M

**THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA**

C.R.P.NPD(MD) No.769 of 2014

and

MP(MD)No.2 of 2014

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1. Mariammal  
2. Nattar Muthulakshmi  
3. Rajalakshmi  
4. Revathipriya ... Petitioners  
Vs

Jeyalakshmi ... Respondent

Petitions filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 25/2/2014 passed in I.A.No.628 of 2013 in O.S.No.183 of 2007 on the file of the Sub-Court, Thoothukudi.

For petitioners ... Mr.G.Prabhu Rajadurai  
For respondent ... Mr.M.C.Swamy

O R D E R

This Civil Revision Petition is filed by the defendants 1 to 4 in the suit.

2. The petitioners were set ex parte in the suit. Hence they filed an application to set aside the ex parte decree. The said application was returned for want of certain compliance by the petitioners/defendants. The return was on 10/12/2008 and thirty days time was granted for compliance. However, the application was re-presented by the petitioners with a delay of 1682 days. The reason given by the petitioners in the affidavit is that the files got mixed up with the other bundles and therefore, they could not retrieve it immediately. Therefore, prayed for condonation of the delay.

3. The said application was resisted by the first plaintiff contending that each day's delay was not explained and already the final decree proceedings have been initiated and there also, he was set ex parte and therefore, prayed for dismissal.

4. The learned Sub-Judge, Thoothukudi, who tried the application had dismissed the same holding that the petitioners could have at least filed another application for setting aside the ex parte decree instead of searching for the returned papers. Aggrieved by the same, the above revision is filed.

5. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

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6. As the delay is only in re-presentation which is between the Court and the counsel, it was prayed by the petitioners to allow the



same. It is not in dispute that the application under Order 9 Rule 13 of the Code of Civil Procedure was filed within time. It is only contended by the petitioners that the papers were mixed up and the counsel could not trace the papers and hence the delay of 1682 days had occurred.

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7. The petitioners counsel, in support of his contention relied on 2009 (1) MLJ - 1216 (SARDHAR SAHIB AND ANOTHER Vs. SYATH JAFER SAHIB), wherein in a similar circumstance, this Court had condoned the delay of 2602 days in representing the application.

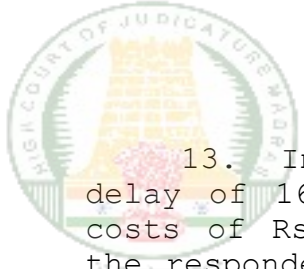
8. The learned counsel for the petitioners also placed reliance on the Division Bench decision of this Court reported in 1993 TNLJ - 375 (Y.CUSBAR Vs. K.SUBBARAYAB). Even in the said case, the Honourable Bench has held that care has to be taken to see that Justice should not suffer. In such cases, if there is undue delay in re-representation of the papers, it could be compensated by awarding costs. Therefore, the inordinate delay in representing the papers can be condoned by taking a lenient view by compensating the other side with sufficient costs.

9. But the counsel appearing for the respondent vehemently opposed the condonation of delay. The learned counsel placed his reliance on a very recent judgment of this Court in a Division Bench dated 19/1/2015 between 1. THE SECRETARY TO GOVERNMENT, MUNICIPAL ADMINISTRATION AND WATER SUPPLY DEPARTMENT, GOVERNMENT OF TAMIL NADU, FORT ST. GEORGE, CHENNAI 600 009 AND 2 OTHERS Vs. 1. R.VELAYUTHAM AND 16 OTHERS). But the said case was not the delay in re-representation but to condone the delay in filing the appeal.

10. The learned counsel also placed reliance on the judgment reported in 2013 (2) CLT - 493 (THE COMMISSIONER, METTUR MUNICIPALITY OFFICE, METTUR DAM POST, METTUR TALUK, SALEM DISTRICT Vs. QUINY AND ANR), which is again a case of delay in filing the appeal which was dismissed by this Court. But the delay in representation is on a different footing.

11. As the discretion is with the Court and it is for the Court to show any indulgence to the petitioners for condoning the delay. If the Court exercising its discretion shows indulgence to the petitioners, the respondent cannot have any objections. Besides, the trial Court being the one of the fact finding Courts, an opportunity has to be given to the defendants to participate in the proceedings and put forth their case. The suit being one for partition and the defendants claim to have a good case on merits, in the interest of Justice, this Court feels that the revision has to be allowed.

12. As the substantial justice being paramount, technical considerations should not be given undue emphasise, it is not the Court's negligence on the part of the litigant alone but also on the part of the counsel. Therefore, the lack of bona fides cannot be imputed to the party alone in case of delay in re-representation. However, while taking a liberal approach in condoning the delay, care has to be taken to compensate the other side for the prejudice that he or she may be put to.



13. In the result, this Civil Revision Petition is allowed and the delay of 1682 days in re-presentation is condoned on payment of costs of Rs.2,000/- (Rupees Two thousand only) by the petitioners to the respondent within a period of two weeks from the date of receipt of the copy of this order. If the respondent refuses to receive the same, it may be deposited to the credit of the suit in O.S.No.183 of 2007 on the file of the Sub-Court, Thoothukudi. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(T&P)

/TRUE COPY/

Sub Assistant Registrar

To

The Subordinate Judge, Thoothukudi.

+1cc to Mr.G.Prabu Rajadurai,Advocate, SR.No.7518

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mvs

PA/24.02.15/2P/3C