



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P (MD) No.2496 of 2016 (NPD)

and

C.M.P (MD) No.11736 of 2016

1.P.Ganesh

2.P.Rooba

.. Petitioners/Respondents/Respondents/
plaintiffs

Vs.

A.Palanisamy

..Respondent/Petitioner/Petitioner/
Defendant

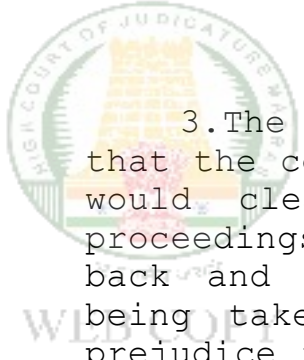
PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the order, dated 23.08.2016 made in I.A.No.188 of 2014 in I.A.No.195 of 2012 in O.S.No.67 of 2011, on the file of Principal District Judge, Dindigul District, Dindigul and allow this Civil Revision Petition.

For Petitioners : Mr.T.Antony Arul Raj
For Respondent : Mr.M.P.Senthil

ORDER

This Civil Revision Petition is filed as against the order of the learned Principal District Judge, Dindigul allowing the Interlocutory Application in I.A.No.188 of 2014 in I.A.No.195 of 2012 in O.S.No.67 of 2011.

2.The suit in O.S.No.67 of 2011 is for partition of plaintiffs 2/3 share in all the suit properties and for recovery of possession. There was an ex-parte decree in the suit. A petition in I.A.No.195 of 2012, was filed to condone the delay of 216 days in filing the petition to set aside the ex-parte decree and the same was dismissed for default on 30.04.2014 and thereafter, the application in I.A.No.188 of 2014 was filed for restoration of I.A.No.195 of 2012 with a delay of 89 days for restoration of I.A.No.195 of 2012. The said I.A., to condone the delay of 89 days in filing a petition for restoration of I.A.No.195 of 2012, was allowed by the Trial Court by the impugned order, dated 23.08.2016.



3. The learned counsel for the Revision Petitioner submitted that the conduct of the respondent in prosecuting his applications would clearly show that his intention is to protract the proceedings. Since the suit for partition was filed about six year back and the respondent has successfully prevented the matter being taken for trial, learned counsel submitted that serious prejudice will be caused to the plaintiffs/Revision petitioner if the respondent is shown any sympathy. The Trial Court has allowed the petition exercising its discretion, by condoning the delay of 89 days. Even this petition was allowed subject to payment of costs to the revision petitioner. It may be true that, the petitioner may be at fault at different stages of the same proceeding. As far as the petition to condone the delay filed under Section 5 of Limitation Act is concerned, the Court concerned will take into account the conduct of the parties with reference to the particular petition. It is not open to the Court even to consider the application taking into consideration the merits of the case.

4. In that view of the position, I am of the view that the discretion exercised by the lower Court to condone the delay need not be interfered with by this Court on the basis of conduct of the respondent, who is the the defendant in the suit in filing the petition to set aside the ex-parte decree with a long delay.

5. I do not find any merit in the revision petition and the Civil Revision Petition is dismissed. However, the discretion exercised in favour of the respondent and the indulgence that was shown by the Trial Court in favour of the respondent herein cannot be taken advantage of by the respondent while considering the connected applications that are pending before the trial Court purely on merits. All those applications may be decided on its own merits. Connected M.P. is closed.

Sd/
Deputy Registrar (J)

/True Copy/

Sub Assistant Registrar.

To
The Principal District Judge,
Dindigul District, Dindigul

+1CC to M/S.M.P.Senthil, Advocate, SR.No.79931
+1CC to M/S.T.Antony Arulraj, Advocate, SR.No. 80420

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