

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:02.11.2017

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

CRP.No.3054 of 1999

1.Kaliammal (died)

2.Palaniappa Mudaliar

3.Muthulakshmi

4.Rajamani

5.Parvathamani

(petitioners 2 to 5 are brought on record as LR's of the deceased sole petitioner (Kaliammal) vide order of Court dated 02.09.2004 and made in C.M.P.No.19217/01)

6.Aruchamy

7.Sivasankar

(Petitioners 6 and 7 brought on record as LR's of the deceased 4th petitioner viz., Rajamani vide order dated 02.11.2017 made in C.M.P.Nos.1456 to 1458/09 in CRP.No.3054/1999 by MVMJ)

.. Petitioners

vs.

1.V.R.Mariappan

2.Ramathal

3.Kochappan

4.Krishnan

5.A.P.Mohideen

6.Padmanabhan

(R6 brought on record as LR's of the deceased sole petitioner vide order dated 02.09.2004 made in C.M.P.No.19217 of 2001)

7.M.Vetriselvan

8.M.Alagirisamy

9.M.Shanmugam
 10.M.Ramasamy
 11.M.Radhakrishnan
 12.M.Valarmathi

(Respondents 7 to 12 brought on record as LR's of the deceased 1st respondent viz., Mariappan vide order of Court dated 02.11.17 made in C.M.P.Nos.1459 to 1461 of 2009 in CRP.No.3054/99 by MVMJ)

.. Respondents

Civil Revision Petition filed under Section 115 of C.P.C, against the fair and decretal orders dated 03.07.1998 in I.A.No.377 of 1996 in A.S.C.F.R.No.5211/96 on the file of the Principal District Judge's Court, Coimbatore.

For Petitioners : Mr.C.R.Prasanan

For Respondents : No Appearance

ORDER

This petition is filed against the fair and decretal orders dated 03.07.1998 in I.A.No.377 of 1996 in A.S.C.F.R.No.5211/96 on the file of the Principal District Judge's Court, Coimbatore.

2. The case of the petitioner is that the plaintiff who is the petitioner herein has filed a suit in O.S.No.2642 of 1989 before the

District Munsif Court, Coimbatore for partition and the same was dismissed on 02.02.1995. Against which, the petitioner herein has preferred an appeal along with an application in I.A.No.377 of 1996 to condone the delay of 368 days in filing the appeal in which she contended that as her daughter was sick, she was looking after her and therefore, she could not take steps to file the appeal in time. Without considering the reasons stated by the petitioner, this application was dismissed by the trial Court. Against which, this petition has been filed.

3. The learned counsel appearing for the petitioner submits that during the relevant period, the petitioner's daughter was sick and she had been attending her daughter all the time and she could not be able to contact her counsel to give instruction to him so that, the counsel could not take effective steps to file the appeal within time prescribed by law. Further, he submitted that the petitioner is an illiterate woman and that the trial court must have given an opportunity to the petitioner to urge the case on merits and the trial Court ought to have allowed the application and condoned the delay by exercising its discretionary power in case of the petitioner. Hence, he prays for allowing the petition.

4. Though notice has been served on the respondents, they have not chosen to appear before this Court either in person or through counsel.

5. Now, the issue that arises for consideration is whether the order passed by the Trial Court is liable to be interfered with or not?

6. The scope of condonation of delay under Section 5 of the Limitation Act has been elaborately considered in a long line of decisions of the Hon'ble Supreme Court in ***Isha Bhattacharjee Vs. Managing Committee of Taghunathpur Nafar Academy reported in (2013) 12 SCC 649*** that: "there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the Courts are not supposed to legalise injustice but are obliged to remove injustice".

7. The primary aspect that has to be looked into is whether the person who is making an Application seeking condonation of delay has adduced justifiable, valid and bonofide reasons and whether it is only due to the genuine inability of the Petitioner to file the appeal in time before the Court.

8. In the instant case, though the Appeal has been preferred after a delay of 368 days, the reason adduced by the petitioner is that she is an illiterate person and that her daughter was sick during the relevant period and that she could not able to meet her counsel and hence, he filed a petition of condonation of delay in filing the appeal to set aside the judgment. But, the Court below has not considered the aforesaid reason and dismissed the application.

9. Though the Hon'ble Supreme Court has stated that a liberal approach has to be adopted in the matters of condonation of delay and if there are bonofide reasons offered by the parties, it has to be taken note that under the garb of being liberal, persons those who have allowed grass to grow under their feet by delaying inordinately before the Court cannot be permitted to be said as bonafide litigants. In the instant case, there is a delay of 368 days and this petition is of the year 1999 and the reasoning given by the petitioner is in the view of this Court, satisfactory or justifiable.

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M.V.MURALIDARAN, J.
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10. Considering the facts and circumstances of the case and in the light of the decision of the Hon'ble Supreme Court cited supra, the order passed by the Trial Court in I.A.No.377 of 1996 in A.S.C.F.R.No.5211/96 on the file of the Principal District Judge's Court, Coimbatore is set aside and the Civil Revision Petition is allowed on condition that the petitioner shall pay a sum of Rs.5,000/- to the **Headmistress Government Hobart Muslim (Girls) Higher Secondary School, Whites Road, Royapettah, Chennai - 600 014**, within a period of two weeks from the date of receipt of a copy of this order.

02.11.2017

Index:Yes/No
Internet:Yes/No
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To
The Principal District Judge's Court,
Coimbatore.

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