

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.NPD.No.4039 of 2017

S.Pachiyannan

..Petitioner

Vs.

Meyyammal (Died)

1. K. Kuzhanthaiyappan
2. S.Solachi
3. K.Pachiyappan
4. K.Murugesan

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and final order dated 22.03.2017 in I.A.No.612 of 2014 in O.S.No.263 of 2001 on the file of the Principal District Munsif Court, Bhavani, Erode District

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For petitioner : Mr.P.Parthi Kannan

ORDER:

The learned counsel for the petitioner would submit that

the respondents herein filed a suit in O.S.No.263 of 2001 for partition. In the aforesaid suit, Ex-parte Decree was passed on 17.02.2003. Pursuant to that, the petitioner herein filed an application in IA.No.612 of 2015 to condone the delay of 11 years 260 days in filing an application to set aside the ex-parte decree. The court below has dismissed the said application. Therefore, the petitioner has filed the present Civil Revision Petition before this Court.

2. According to the learned counsel for the petitioner that the delay of 11 years and 260 days in filing the above condone delay application is only due to illness of the petitioner. But the court below has not appreciated the case of the petitioner and dismissed the said application. Therefore, the order passed by the trial court is liable to be set aside.

3. Considered, the submissions made by the learned counsel for the petitioner and also perused the materials on record.

4. On perusal of the affidavit filed by the petitioner, the petitioner has stated in his affidavit that the petitioner is suffering from illness. Therefore, he could not receive any information from

the counsel. Due to the aforesaid bonafide reason, the delay was caused. But the petitioner has not furnished any particulars for the inordinate delay in filing the application.

5. At this juncture, it is useful to extract the judgment of the Hon'ble Supreme Court in **H.DOHIL CONSTRUCTIONS COMPANY PRIVATE LIMITED Vs. NAHAR EXPORTS LIMITED AND ANOTHER**, reported in **(2015) 1 SCC 680**, wherein it is held as follows:

"The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific

performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered."

6. In the light of the aforesaid Judgment and the facts of the present case, the petitioner has not furnished any particulars for the inordinate delay, no prima facie case is made out to entertain the Civil Revision Petition. Hence, the aforesaid orders passed by the trial court is confirmed and there is no error or illegality in the order passed by the trial court.

7. Hence, the Civil Revision Petition fails and accordingly, the Civil Revision Petition is dismissed. No costs.

07.11.2017

Speaking/Non-speaking order

Index : Yes/No

Internet: Yes/No

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To

The Principal District Munsif Court,
Bhavani, Erode District



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D.KRISHNAKUMAR. J,

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