

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2017

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CRP Nos.1337, 1357 and 1366 of 2016

CMP Nos.7501, 7607, 7593 of 2016 and 439 of 2017

K.Rathinavel

....Petitioner in all CRPs/  
2nd Defendant

vs

1. K.Dhanlakshmi

Krishna Gounder ( Deceased )

2. S.Muthulakshmi @Muthayee

....Respondents in all CRPs/  
Plaintiff, D1 & D3

These Civil Revision Petitions have been filed under Section 115 of Civil Procedure Code praying to set aside the fair and decreetal orders made in I.A.No.105 of 2015, I.A.No.83 of 2013 and I.A.No.84 of 2013 in U.N.A.S.No. of 2013 dated 11.03.2016 passed by the Principal District Judge, Namakkal .

For Petitioner : Mr.T.DhanyaKumar  
For Respondents 1 & 2: Mr.P.Mathivanan

COMMON ORDER

The petitioner has come forward with the present Civil Revision Petitions praying to set aside the fair and decreetal order dated 11.03.2016 made in I.A.No.105 of 2015, I.A.No.83 of 2013 and I.A.No.84 of 2013 in U.N.A.S.No. Of 2013 by the Principal District Judge, Namakkal District.

2. According to the Revision petitioner, the first respondent filed the suit in O.S.No.105 of 2010 for partition and separte possession. In the aforesaid suit, the Trial Court has passed preliminary decree on 18.10.2012. Aggrieved against the same, the respondent has filed an appeal along with I.A.No.84 of 2013 to condone the delay of 10 days in filing the appeal. The said application along with appeal was returned for some defects. Thereafter, there was a delay of 218 days in representing the said application. Therefore the petitioner has filed another application in I.A.No.83 of 2013 to condone the delay of 218 days in representing the above application with the appeal. Thereafter, the petitioner filed another application in I.A.No105/2015 to stay the final decree proceedings in I.A.352/2013. However, the Appellate Court dismissed all the above applications. Aggrieved against the order of dismissal of the above applications, the petitioner is before this Court.

3. On contrary, the learned counsel for the respondents has submitted that the first respondent herein filed the suit in O.S.No105 of 2010 and in the said suit, preliminary decree was passed on 18.10.2012 and therefore, the first respondent filed final decree application in I.A.No.352 of 2013 and at this stage, the petitioner has come up with the application for stay of final decree proceedings, therefore, considering the facts and circumstances, the trial Court has rightly dismissed the above applications.

4. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

5. This court is of the view that in the aforesaid applications, the petitioner has given bonafide reasons for condoning the delay in filing and also representing the said appeal. This court, after perusal, accepted the reasons stated for condoning the delay. The Hon'ble Apex Court in the decision reported in 2013(5) CTC 547 (Esha Bhattacharjee v. Managing Committee of Raghunathpur, Nafar Academy and others) has held that the Court should liberal approach while dealing with the condoning the delay to set aside the exparte order and 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. In the light of the above said judgment, considering the facts and circumstances of the case, the delay is hereby condoned and the order passed by the trial Court in I.A.Nos.83 and 84 of 2013 are hereby set aside. Since the order passed in the condone delay petitions by the Appellate Court are set aside by this court, this court also set aside the order passed in stay petition.

6. In the above circumstances, this court passes the following order:-

(i) All the above three Civil Revision Petitions are allowed.

(ii) The order passed in I.A.Nos.83 and 84 of 2013 are set aside and the condone delay petitions are allowed. The Appellate Court is directed to number the appeal, if it is otherwise in order.

(iii) The order passed in I.A.No.105 of 2015 is also set aside and the Appellate Court is directed to dispose of the stay petition seeking stay of Final Decree proceedings pending before the Sub Court, Rasipuram, as expeditiously as possible.

- (iv) No costs.  
(v) Connected Miscellaneous Petitions are closed.

-s/d-  
Assistant Registrar(CSIII)

True Copy

Sub-Assistant Registrar

sm/mra

To:

1. The Principal District Judge,  
Namakkal District.
2. The Subordinate Judge  
Rasipuram.

+2 ccs to Mr.T.Dhanyakumar Advocate sr nos.18763 & 18764

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