

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(NPD) No.3095 of 2012  
and  
M.P.No.1 of 2012

R.Subramanian

.. Petitioner

Vs

1. R.Ekambara Mudaliar  
2. Saraswathy  
3. Kamala

.. Respondents

PRAYER: Revision Ppetition against the order dated 17.07.2012  
passed in C.M.P.No.396 of 2011 in Unnumbered A.S. by the learned  
Subordinate Judge, Kanchipuram.

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For Petitioner

: Mr.J.Ramakrishnan

For Respondents

: Mr.A.S.Narasimhan

**ORDER**

The petitioners have filed this revision petition assailing the order dated 17.07.2012 passed in C.M.P.No.396 of 2011 in Unnumbered A.S. by the learned Subordinate Judge, Kanchipuram.

2. The facts in brief are as under:

The petitioner herein is the plaintiff in the suit in O.S.No.502 of 2007 seeking, *inter alia*, for a preliminary decree for partition against the respondents/defendants. In the said suit, the respondent/defendants filed written statement. The learned Additional District Munsif, Kancheepuram, by judgment dated 27.10.2010, held that the petitioner/plaintiff is entitled to 1/4<sup>th</sup> share in the suit property.

3. It is stated that based on the preliminary decree, the respondents filed a final decree petition for allotment of share in I.A.No.95 of 2011 and for appointment of Advocate Commissioner to make division only in the rear portion of the entire house as per the settlement deed dated 14.01.1954. However, the Court below dismissed the petition on 07.07.2011 stating that the preliminary decree is in respect of the entire door number and no specific

boundary can be given to Advocate Commissioner, since no appeal was filed against the preliminary decree by the respondents herein.

4. Thereafter, the respondents had filed an appeal with an application to condone the delay of 217 days in filing the appeal against the decree dated 27.10.2010 in O.S.No.502 of 2007.

5. In the application seeking condonation of delay, the respondents had stated that the non filing of appeal was due to ignorance of law and on account of no proper advise from his counsel to file appeal based on the settlement deed and therefore, the delay was neither willful nor wanton.

6. The said application to condone delay was resisted by the petitioner.

7. The Court below, by order dated 17.07.2012, allowed the petition seeking condonation of delay in filing the appeal.

8. Assailing the said order, the present revision petition is filed.

9. The learned counsel appearing on behalf of the petitioner submits that when the respondents have filed an interlocutory application for passing of final decree based on the preliminary decree and such relief has been rejected by the Court below, they cannot now file an appeal against such preliminary decree.

10. He further submitted that the respondents did not explain each day's delay as envisaged under Section 5 of the Limitation Act and, therefore, the Court below ought not to have condoned the delay of 211 days in filing the appeal.

11. The learned counsel for the respondents reiterated the reasons that weighed with the Court below while condoning the delay and prayed for dismissal of the revision petition.

12. I heard Mr.J.Ramakrishnan, learned counsel for the petitioner and Mr.A.S.Narasimhan, learned counsel for the respondents and perused the documents available on record.

13. The delay in filing the appeal is 211 days and the application seeking condonation of such delay filed under Section 5 of the Limitation Act was allowed by the Court below.

14. The Supreme Court, time and again, held that the power to condone delay by enacting Section 5 of the Limitation Act, 1963 is to enable the courts to do substantial justice to parties by disposing of matters on merits; that the expression "*sufficient cause*" employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which serves the ends of justice which is the life purpose for the existence of the institution of courts; substantial justice deserves to be preferred as against technical considerations; and the courts should prefer to deliver justice on merits in preference to the approach which scuttles a decision on merits.

15. It is the specific case of the respondents that due to confused advise given by his counsel, they did not file an appeal in time and that they were under a misconception that they can themselves file a petition for passing of final decree and it was under such misconception, they in fact filed an application for passing a final

decree. So, it is clear that it is not the intention of the respondents to drag on the proceedings or to protract the proceedings. The Court below was convinced that the delay of 211 days was due to confused advise by the counsel and that the appeal should be decided on merits after giving opportunity to both sides.

16. The Courts are empowered to allow the application for condonation of delay, on sufficient cause being shown or reject such an application in exercise of its judicious discretion. It is not as if each application for condonation of delay has to be allowed as a matter of right, no matter whether any "*sufficient cause*" for the delay is shown or not. Each case is to be decided on facts and circumstances. The length of delay is no matter. All that matters is the acceptability of explanation

17. It is trite that rules of limitation are not meant to destroy the right of the parties and they are meant to see that parties do not resort to dilatory tactics. Since it is a suit for partition and as substantial rights of the parties are involved and having regard to the reasons recorded supra, this Court is of the considered opinion the trial Court has rightly condoned the delay of 211 days.

18. For the foregoing reasons, this revision petition is dismissed. No costs. Consequently, M.P.No.1 of 2012 is closed.

27.01.2017

Note: Issue order copy on 08.05.2018  
vs

Index : Yes  
Internet : Yes

To

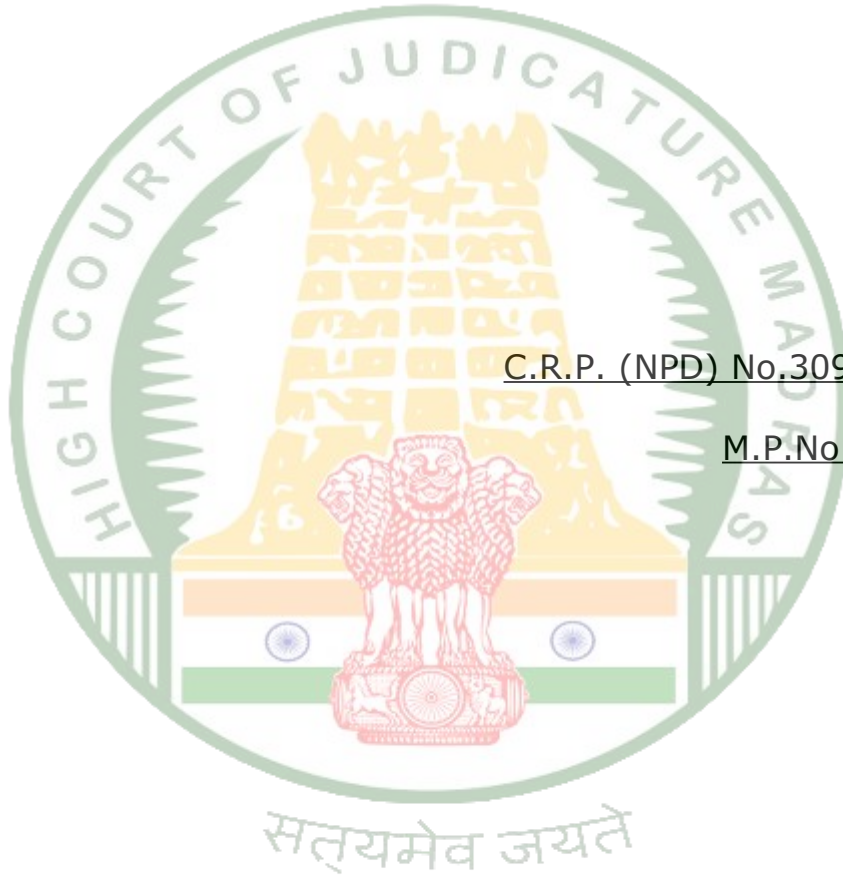
The Subordinate Judge,  
Kanchipuram.



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M.V.MURALIDARAN, J.

VS



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