

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated: 03.02.2017**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**

**CRP(NPD)No.3351 of 2012  
and  
M.P.No.1 of 2012**

Paramasivam

.. Petitioner

Vs.

1.Venkatachalam

2.Mani

3.Periyasamy

..Respondents

**Prayer:** Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order dated 16.03.2012 in I.A.No.248 of 2011 in O.S.No.21 of 2011, on the file of the Subordinate Court, Attur.

For Petitioners : M/s.A.B.Reehana Begum  
for Mr.T.R.Rajaraman

For Respondents : Mr.A.K.Kumarasamy

**ORDER**

The plaintiff in O.S.No.21 of 2011 on the file of learned Sub Court, Authur is the revision petitioner. This civil revision is directed as against order allowing I.A.No.248 of 2011 dated 16.03.2012.

2.The revision petitioner as plaintiff filed the suit in O.S.No.21 of 2011 against the respondent herein before the file of learned Sub Court, Authur for the relief of partition and separate possession. In the said suit the 10 to 12 defendants/ respondents herein were set Ex-parte and an Ex-parte Preliminary Decree was passed on 01.08.2003. In order to set aside the same they filed an application along with condone delay application and the same was return for want of certain corrections to be carried out. Though the respondent herein taken return papers, the same could not be represented in time as the bundle got mixed up with other bundle in the office of their counsel. Therefore after tracing out of bundle, the respondents herein had represented the same with delay of 580 days vide application in I.A.No.248 of 2011.

3.The revision petitioner has resisted the application, contending

that the respondents herein have not come to the Court with clean hand and their intention is only to delay the disposal of suit. After Ex-parte decree was passed the revision petitioner filed final decree application. It is further contented by the revision petitioner that the counsel who appearing for the respondents herein, also the counsel for them in other cases. Therefore the reason assigned by the respondents herein is unsustainable and the same cannot be accepted.

4.Considering the case on either side, the trial Court allowed the application filed by the respondents herein and thereby condoned the delay of 580 days in representing the Section 5 application. The said order is under challenge in this Civil Revision.

5.I heard M/s.A.B.Reehana Begum for Mr.T.R.Rajaraman, learned counsel for the petitioner and Mr.A.K.Kumarasamy, learned counsel for the respondents and perused the entire materials available on records.

6.From the perusal of Trial Court order, this Court could not find any infirmity or irregularity in the order allowing the application to condone delay of 580 days in representing the Sec.5 application. The

Learned Trial Judge after taking into consideration of the entire facts and circumstance of the case and also the Judgment of our High Court reported in 2002 (3) CTC 22 relied on by the counsel for the respondents herein, has come to the conclusion that the delay of 580 days in representing Sec.5 application to be allowed and according the Learned Trial Judge has allowed I.A.No.248 of 2011. This Court considered the submission made on the side of the revision petitioner and found that though there is lacuna on the part of the respondents herein in conducting the case, but the same cannot be the reason to reject the application filed by the respondents herein that too in considering the delay in representation application.

7. Therefore, I am also view that the order of Trial Court need not be disturbed and the same is liable to be confirmed in the interest of justice and accordingly confirmed.

8. However, considering the delay and hardship caused to the revision petitioner by the respondents herein, this Court is of the opinion that the same has to be compensation by awarding cost of Rs.1000/- to be paid by the respondents herein to the revision petitioner.

9.In the result, this Civil Revision Petition is dismissed with a direction to the respondents herein to pay cost of Rs.1000/ to the revision petitioner within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

**03.02.2017**

Note:Issue order copy on 16.11.2018

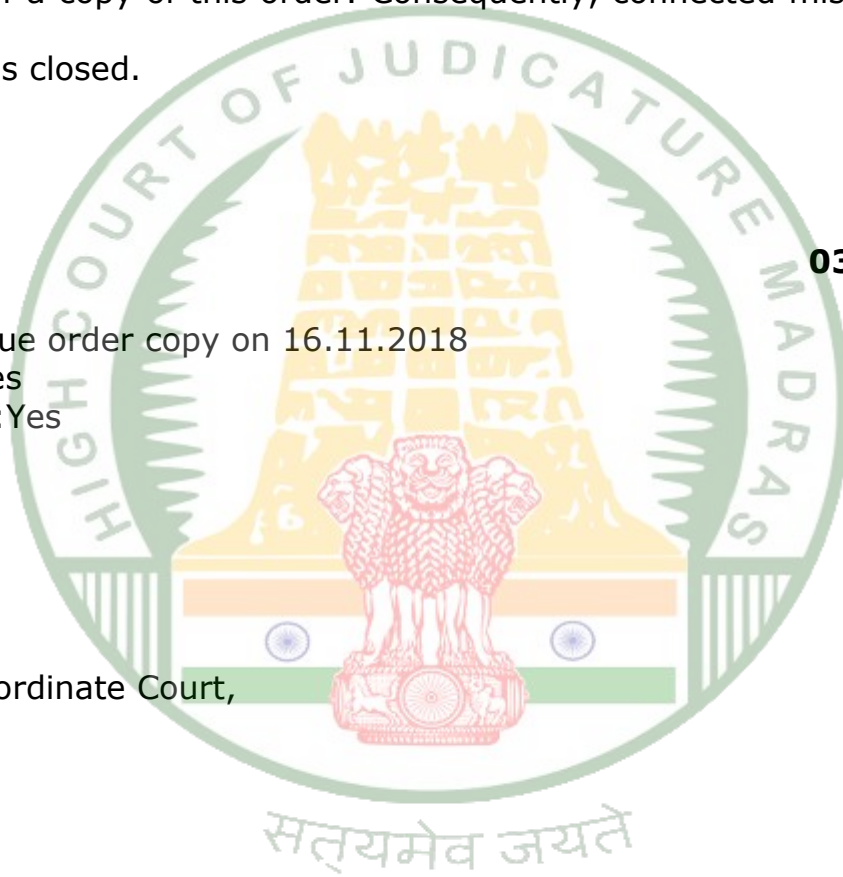
Index:Yes

Internet:Yes

vs

To

The Subordinate Court,  
Attur.



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**M.V.MURALIDARAN, J.**

VS



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