

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **17.04.2017**

CORAM:

THE HONOURABLE **MR. JUSTICE K.K.SASIDHARAN**

C.R.P.(N.P.D.) No.786 of 2013 and
M.P. No.1 of 2013

Jothiyammal

...Petitioner

versus

1.Ramasamy
2.Panjalai
3.Sellammal
4.Ramalingam
5.Vaiyapuri

...Respondents

(Respondents 2 to 5 are set exparte in appeal hence they are given up in Civil Revision Petition and no batta was paid)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 22.01.2013 made in I.A.No.197 of 2012 in A.S.No.2 of 2012 on the file of the learned Subordinate Judge, Kallakurichi.

For Petitioner : Mr.R.Kumaravel

For R1 : Mr.Mukunth for

M/S.Sarvabhauman Associates

R2 to R5 : Given up

ORDER

The civil revision petition is directed against the order dated 22 January 2013 allowing the application filed by the first respondent seeking condonation of delay in filing the application to present cross appeal.

2. Heard the learned counsel for the petitioner and the counsel for first respondent.

3. The petitioner filed a suit in O.S.No.465 of 2007 for partition. The Trial Court decreed the suit in respect of eight items of properties and negated the relief with respect to two other items. The petitioner dissatisfied with a portion of the decree filed an appeal in A.S.No.2 of 2012. The first respondent on receipt of notice entrusted the matter with a counsel. Thereafter and morefully, after a delay of 239 days, he filed a petition to condone the delay in filing cross appeal. The delay was condoned by the Trial Court. Feeling aggrieved, the petitioner is before this Court.

4. There is no dispute that the first respondent received the

notice and entrusted the matter with a counsel. Thereafter, he filed the application to condone the delay in filing the cross appeal. The first respondent, in the affidavit filed in support of the interlocutory application, contended that he was laid up and was taking native treatment. It is true that the first respondent has not given detailed reasons with respect to his illness and treatment taken by him. The learned Trial Judge exercised the discretion, taking into account the illness projected by the first respondent. It is not for this Court, to reappreciate the materials once again for the purpose of taking a different view in the matter.

5. The learned Trial Judge allowed the application by directing the first respondent to pay a sum of Rs.800/- towards costs. The cost amount should be fixed in a realistic manner. The learned Trial Judge was not correct in directing the first respondent to pay a sum of Rs.800/- by way of cost instead of directing payment of reasonable cost. Therefore, I am of the view that the cost amount has to be enhanced. The order passed by the learned Trial Judge dated 22 January 2013 is confirmed subject to the modification with regard to cost. The first respondent is directed to pay a sum of Rs.5,000/- by way of cost to the petitioner. The cost amount shall be paid on or before 7

June 2017. The learned Appellate Judge is directed to number the cross appeal and dispose of the matter within a period of four months from the date of receipt of a copy of this order.

6. The Civil Revision Petition is disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

17.04.2017

Index:Yes/No
kj

To

The Subordinate Judge, Kallakurichi.

K.K.SASIDHARAN,J.

Kj

C.R.P.(N.P.D.) No.786 of 2013 and
M.P. No.1 of 2013

17.04.2017

<http://www.judis.nic.in>