



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2018

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU**C.R.P. (NPD) (MD) No. 628 of 2018**

S.Ambiga : Petitioner/Petitioner/Petitioner/Plaintiff

Vs.

S.Veluchamy (died)

V.Alagammal (died)

P.Krishnammal (died)

S.Palanichamy (died)

M.Chellammal (died)

1.J.Rajammal : Respondents/Respondents/Respondents/Defendants

2.Pushpam

3.Karthikeyan

4.Jeyasree

5.Manimegalai

6.Manjula

7.Madhuvathani

8.Madhankumar

9.Matheruboomi

10.Sangavi

11.Mallika

12.Manohar

13.Kalarani

14.Jothi

15.Deenathayalan

16.Deivalakshmi

17.Thirunavukarasu

18.Yogalakshmi

19.Angaiyarkanni ..Respondents/Respondents/Proposed parties/
LRs. of the deceased defendants 1 to 5

Prayer: Civil Revision Petition is filed under section 115 of the Code of Civil Procedure, against the fair and decreetal order, dated 01.11.2017 passed in I.A.No.626 of 2016 in I.A.No.18 of 2016 in O.S.No. 455 of 2002 on the file of the learned II Additional Subordinate Judge, Madurai.

For Petitioner

: Mr.K.Sureshkumar

**ORDER**

This civil revision is filed against the order and decreetal order dated 01.11.2017 made in I.A.No.626 of 2016 in I.A.No.18 of 2016 in O.S.No. 455 of 2002 on the file of the learned II Additional Subordinate Judge, Madurai, dismissing the application to condone the delay of 63 days in filing the petition to restore the suit, which was dismissed for default by order dated 01.08.2016

2. The petitioner is the plaintiff in the suit in O.S.No.455 of 2002 and the said suit has been filed for partition and for separate possession. During pendency of the suit, the third defendant P.Krishnammal died and therefore, the petitioner filed an Interlocutory Application to implead the legal heirs of the deceased Krishnammal. The main suit was posted for taking steps and payment of Batta on 01.08.2016 and she could not appear on that day due to ill-health. Hence the suit was dismissed for default. Therefore, the petitioner filed a petition to condone the delay of 63 days in filing the petition to restore the suit, which was dismissed for default by order dated 01.08.2016 and the Trial Court declined to condone the delay, thereby dismissed the petition, aggrieved by which, this civil revision petition has been filed by the petitioner.

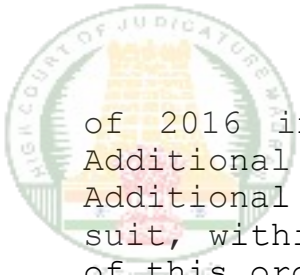
3. The respondents/Defendants, before the Appellate Court, through their counter affidavit has submitted that the petitioner had filed the present petition with an intention to drag on the proceedings. The petitioner has not given any valid reason or sufficient cause for the delay in filing the above Application for restoration and hence, prayed for dismissal.

4. Heard the learned Counsel for the petitioner and perused the materials available on record.

5. It is seen from the records that the above application has been filed to condone the delay of 63 days in filing the application to restore the suit, which was dismissed for default on 01.08.2016. The petitioner and the respondents are the sister and brothers. According to the learned Counsel for the petitioner, earlier counsel engaged by her got married and thereby, returned the bundle to her. The petitioner being an unmarried woman, she could not engage new counsel in time, due to her old age and health condition and also she is not aware of the Court proceedings and hence, the delay may be condoned.

6. Considering the fact that the petitioner is an old age lady and also considering the fact that the suit is of the year 2002, in my considered opinion to meet the ends of justice, one opportunity can be given to the petitioner by directing the learned Trial Judge to dispose of the suit within a time frame.

7. Accordingly, this Civil Revision Petition is allowed and the order dated 01.11.2017 made in I.A.No.626 of 2016 in I.A.No.18



of 2016 in O.S.No. 455 of 2002 on the file of the learned II Additional Subordinate Judge, Madurai, is set aside. The learned II Additional Subordinate Judge, Madurai is directed to dispose of the suit, within a period of six months from the date of receipt of copy of this order. No costs.

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Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To
The II Additional Subordinate Judge,
Madurai.

Copy to
The Section Officer, (2 copies)
V.R. Section ,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.K.SureshKumar Advocate SR.No.58043,

RM
DS/JC/SAR-2 :07.05.2018: 3P/5C

C.R.P. (NPD) (MD) No.628 of 2018
26.03.2018