



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) No.96 of 2018

WEB COPY

1.Kalaiarasi

2.Minor Dhanalakshmi

3.Minor Meenakshi

4.Minor Rajeswari

5.Minor Balavishnu

(Minors rep. by 1st respondent

/ mother/ natural Guardian

... Petitioners/plaintiffs

-VS-

1.Ammakannu

2.Rakkammal

3.Sankaran

4.Visalam

5.Pasumpon

6.Seethai

... Respondents / Defendants

Prayer: Civil Revision Petition filed under Section 115 CPC for setting aside the fair and decreetal order dated 05.09.2017 made in I.A.No.288 of 2016 in O.S.No.363 of 2013 on the file of the II Additional Subordinate Court, Madurai.

For Petitioner : Mr.R.G. Shankar Ganesh

For R1, 4, 5 and 6 : Mr.K.C. Ramalingam

For R2 & R3 : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decreetal order, dated 05.09.2017 made in I.A.No.288 of 2016 in O.S.No.363 of 2013, on the file of the II Additional Subordinate Court, Madurai.

2. The revision petitioners, who are the plaintiffs, have filed a suit in O.S.No.363 of 2013, on the file of the learned II Additional Subordinate Judge, Madurai, for partition and the same was dismissed for non-prosecution, due to the non-appearance of the petitioners on 06.04.2015. In such circumstances, the revision petitioners / plaintiffs have filed an application in I.A.No.288 of 2016, to condone the delay of 308 days in filing an application for restoring the suit in O.S.No. 363 of 2013 and the same was dismissed on the ground that no proper reasons have been assigned in approaching the Court. Challenging the said order, the petitioner is before this Court.



3. The learned counsel appearing for the petitioners submitted that due to the ill-health of the first petitioner, the petitioners were unable to communicate their counsel. In such circumstances, the said suit was dismissed for default on 06.04.2015. He further submitted that the issue on hand requires adjudication of rights and title of the plaintiffs and he prays for allowing this Civil Revision Petition.

4. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondents. This Court also perused the material documents available on record.

5. It is well settled principles of law that application to condone the delay must be considered liberally and length of delay is not a criteria. The party must be given sufficient reasons for condoning the delay and the intention of the party must be *bona fide* and they must be given an opportunity to put forth their case on merits and should not be shut out at the threshold itself.

6. Keeping in mind the same, if the present case is looked into, this Court is of the view that the petition ought to be allowed and the order dated 5.09.2017 made in I.A.No.288 of 2016 in O.S.No. 363 of 2013, on the file of II Additional Sub Court, Madurai, is liable to be set aside, subject to certain conditions.

6. In the result,

(i) this Civil Revision Petition is allowed by setting aside the order, dated 05.09.2017 made in I.A.No.288 of 2016 in O.S.No.363 of 2013, on the file of the II Additional Sub Court, Madurai, and the application in I.A.No.288 of 2016 is allowed and the delay is condoned on condition that the petitioners are directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to the respondents counsel, within a period of two weeks from the date of receipt of a copy of this order.

(ii) On production of the payment receipt, by the petitioners within the time limit prescribed by this Court, the learned II Additional Subordinate Judge, Madurai, is directed to number the restoration application, and dispose of the same within a period of four weeks, thereafter, after issuing notice to both parties.

(iii) No costs.

Sd/-

Assistant Registrar(CS-III)



To:

The II Additional Subordinate Court, Madurai.

+1cc to Mr.R.G. Shankar Ganesh, Advocate Sr.No.74167

+1cc to Mr.K.C. Ramalingam, Advocate Sr.No.74191

TRP

VB/SKN/SAR3/24.08.2018/3P/4C

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