



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:02.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (MD) No. 2585 of 2015

and

M.P (MD) No.1 of 2015

S.Velan

.. Petitioner

Vs.

S.Pitchai

.. Respondent

PRAYER: Petition filed under Section 115 of the Civil Procedure Code, to set aside the order dated 09.10.2015 in I.A.No.379 of 2015 in I.A.No.191 of 2015 in I.A.No.18 of 2015 in O.S.No.174 of 2009 passed by the learned District Munsif Cum Judicial Magistrate, Vadipatti.

For Petitioner : Mr.M.Divakaran
For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed to set aside the order dated 09.10.2015 in I.A.No.379 of 2015 in I.A.No.191 of 2015 in I.A.No.18 of 2015 in O.S.No.174 of 2009 passed by the learned District Munsif Cum Judicial Magistrate, Vadipatti.

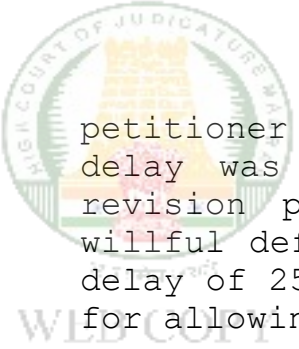
2. When the matter has come up for hearing on 02.07.2018 there was no representation on the side of the respondent and even today there is no representation.

3. The petitioner is the 4th defendant and the respondent is the plaintiff in the suit in O.S.No.174 of 2009. The plaintiff has filed a suit in O.S.No.174 of 2009 for partition before the learned District Munsif Cum Judicial Magistrate, Vadipatti. During the pendency of the suit in O.S.No.174 of 2009, the defendant has filed an interlocutory application in I.A.No.379 of 2015 under Section 5 of the Limitation Act, 1963 for condoning delay of 25 days in re-presenting a petition to restore a petition in I.A.No.191 of 2015 and the trial Court has dismissed the interlocutory application on the ground that the reason for the delay was not acceptable. Aggrieved over the same, the revision petitioner has come forward with this Civil Revision Petition.

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

<https://hcservices.ecourts.gov.in/hcservices/>

5. The learned counsel appearing for the revision



petitioner submitted that the delay of 25 days is meagre and the delay was happened at Advocate Office not on the fault of the revision petitioner. He would further submit that there was no willful default or negligence on the side of the petitioner for the delay of 25 days in representing the I.A.No.191 of 2015 and he prays for allowing this Civil Revision Petition.

6. 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.

7. Considering the above facts and circumstances of the case, this Court is inclined to allow this Civil Revision Petition.

8. In the result,

(i). the Civil Revision Petition is allowed.

(ii).the learned District Munsif-Cum-Judicial Magistrate, Vadipatti is directed to consider the application in I.A.No.379 of 2015 in I.A.No.191 of 2015 in I.A.No.18 of 2015 in O.S.No.174 of 2009 and number the restoration application within a period of two weeks from the date of receipt of a copy of this order,

(iii) after issuing notice to either parties, the learned District Munsif-Cum-Judicial Magistrate, Vadipatti is directed to pass an order within a period of four weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To
The District Munsif-Cum-Judicial Magistrate,
Vadipatti.

+1cc to Mr.M.Divakaran, Advocate Sr.No.71118

KSA

VB/SKN/RSK/SAR3/18.07.2018/2P/3C

C.R.P. (MD) No. 2585 of 2015
02.07.2018