



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) (MD) No.462 of 2015

Mohandoss,
S/o.Athmanathan,
Rep. by his Power Agent Muthulakshmi,
W/o.Shanmugam Pillai

... Petitioner/Petitioner/
Plaintiff

Vs.

Nagoorkani (Died)

1.Parsa Beevi, W/o.Late. Nagoor Kani
2.Yakkath Ali, S/o.Nagoor Kani
3.Mansoor, S/o.Nagoor Kani
4.Thajudeen, S/o.Nagoor Kani
5.Kalandar Beevi, D/o.Nagoor Kani
6.Sakila Banu, D/o.Nagoor Kani

... Respondents/Respondents
Defendants

(3rd Respondent remained ex-parte before
the Trial Court. Hence, he is given up)

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code seeking to set aside the fair and decretal order dated 05.12.2014, passed in I.A.No.389 of 2014 in O.S.No.18 of 2005, on the file of the District Munsif Court, Aranthangi, and to allow the present Civil Revision Petition.

For Petitioner : Mr.Veera Kathiravan
Senior Counsel
for Mr.N.Balakrishnan

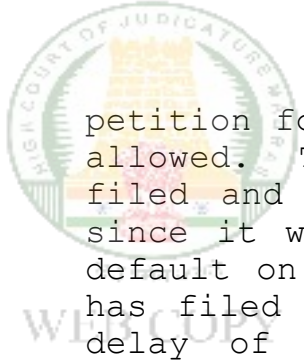
For R1, R4, R5 & R6 : No Appearance

For R2 : Dismissed

For R3 : Ex-parte

ORDER

The revision petitioner is the plaintiff and one Nagoor Kani is the defendant in O.S.No.18 of 2005 on the file of the District Munsif Court, Aranthangi. The revision petitioner has filed the said suit for declaration and permanent injunction. During the pendency of the suit, the said Nagoor Kani died and a



petition for impleading the legal heirs of the said Nagoor Kani was allowed. Thereafter, an amendment petition to amend the plaint was filed and it was returned for compliance of certain defects and since it was not re-presented in time, the suit was dismissed for default on 21.02.2011. Therefore, the revision petitioner/plaintiff has filed an application in I.A.No.389 of 2014 for condoning the delay of 1106 days in filing petition for setting aside the dismissal order dated 21.02.2011, passed in O.S.No18 of 2005 and the said application came to be dismissed by the Trial Court on 05.12.2014, on the ground that no proper reasons were assigned for the delay. Aggrieved by such dismissal, the revision petitioner is before this Court.

2.It is the case of the revision petitioner that the delay of 1106 days occasioned in filing the petition is due to slackness in the Office of the Advocate and the amendment petition was returned and it got mixed up with other bundles and the same could not be traced out immediately to re-present the same. Under these circumstances, the suit was dismissed on 21.02.2011. After tracing out the bundle returned by the Trial Court, the present petition was filed to condone the delay of 1106 days in filing the restoration petition. It is the further case of the revision petitioner that once the order of the Trial Court is allowed to stand, the valuable right of the petitioner over about 56 cents of land would be lost and the stake involved is too much and therefore, to render substantial justice, this civil revision petition deserves to be allowed.

3.Heard the learned Senior Counsel appearing for the revision petitioner and also perused the material documents available on record. There is no representation on behalf of the respondents 1, 4, 5 and 6.

4.It is appropriate to state here that as repeatedly held by this Court, in the matter of condonation of delay, a lenient view should be taken to condone the delay. As regards the delay, it is worthwhile to consider the decision of the Hon'ble Supreme Court in the case of N.Balakrishnan vs. M.Krishnamurthy reported in (1998) 7 SCC 124, wherein, it has been held as under:

'9.It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court



should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.''

5. In the present case on hand, it has been repeatedly reiterated by the revision petitioner that the amendment petition was returned and it got mixed up with other bundles and the same could not be traced out immediately to re-present before the Court and therefore, the delay of 1106 days has occurred in filing petition to set aside the dismissal order dated 21.02.2011.

6. The Hon'ble Supreme Court as well as the High Court have time and again held that merits of the matter should be looked into instead of throwing it on technicalities. Therefore, this Court is of the view that ends of justice would be met by condoning the delay on terms.

7. In the result,

(a) this Civil Revision Petition is allowed and the order dated 05.12.2014, passed in I.A.No.389 of 2014 in O.S.No.18 of 2005, by the learned District Munsif, Aranthangi, is hereby set aside, and the delay of 1106 days will stand condoned on condition that the revision petitioner shall pay the cost of Rs.30,000/- to the Chief Justice Relief Fund, High Court, Chennai, within a period of one week from the date of receipt of a copy of this order;

b) On production of acknowledgment of payment of cost, the Trial Court is directed to number the petition, if any, filed to set aside the order dated 21.12.2011, made in O.S.No.18 of 2005 and dispose the same within a period of two months thereafter. No costs.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif,
Aranthangi.

2. The Record Keeper,
V.R. Section,

<https://hcservices.ecourts.gov.in/hcservices/>
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+1CC to Mr.N.BALAKRISHNAN, Advocate, SR.No.72387

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