

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 17.09.2019**

**PRONOUNCED ON : 27.09.2019**

**CORAM**

**THE HONOURABLE MR.JUSTICE T.RAVINDRAN**

**CMP.No.8512 of 2019**

**in**

**A.S.Sr.No.35662 of 2018**

1.S.Sathyanarayanan  
2.N.Mythili  
3.N.Malini  
4.N.Narendiran

...

Petitioners

Vs.

1.T.N.Senthilvelan  
2.T.N.Neelamegarajan  
3.Suseela  
4.Saimeenakshi  
5.Janice Jacqueline  
6.Kanagam  
7.Parimalam  
8.Saraswathi  
G.Narayanan (deceased)

...

Respondents

**Prayer :-** This Civil Miscellaneous Petition has been filed under Order XLI Rule 3(A) of The Civil Procedure Code to condone the delay of 193 days in filing the above First Appeal against the judgment and decree dated 21.04.2017 in O.S.No.152 of 2011 on the file of the Principal District Judge, Kanchipuram @ Chengalpattu.

For Petitioners : Mr.N.R.Anantha Ramakrishnan

For Respondent : Mr.V.Suryanarayana Reddy  
Nos.1 to 5

Respondent Nos.7 & 8 : No appearance

## **ORDER**

The Civil Miscellaneous Petition has been laid by the petitioners to condone the delay of 193 days in preferring the first appeal.

2.The first respondent herein has laid the suit against the petitioners and other respondents for partition and also to declare the sale deeds dated 13.12.2004 and 31.12.2004 executed by the defendants 5 & 6 through their power agent the 7<sup>th</sup> defendant in favour of the defendants 8 & 9 as null and void and for costs.

3.It is found that the Court below had entertained the suit levied by the first respondent by way of the judgment and decree dated 21.04.2007. Impugning the same, the petitioners have preferred the first appeal. However, as there occurred the delay of 193 days in preferring the same, to condone the delay, the present petition has been laid.

4.It is not the case of the petitioners that they are not aware of the judgment and decree passed by the trial Court on 21.04.2017. Even according to the petitioners, they had applied for the certified copies of the same for the purpose of preferring the first appeal. Even though the petitioners would claim that they had obtained the certified copies of the judgment and decree, according to them, they had not preferred the

appeal in time. It is put forth that their counsel had informed that the certified copies of the judgment and decree would be available in the month of September, 2017 and it is stated that from October, 2017, the health condition of the first petitioner had deteriorated and he had been confined to bed and unable to move out of his residence for more than three months and due to his illness, unable to contact his counsel before the trial Court and furthermore, as no intimation had also been received from their counsel, according to the petitioners, there had been delay in contacting the counsel of the trial Court and only thereafter, they were able to obtain the certified copies of the judgement and decree and entrusted the papers to their counsel at Chennai and as their counsel at Chennai requested further documents, they had been necessitated to apply for the certified copies of the same and after the obtainment of the same, the appeal papers could be presented and hence, the delay had occurred.

5.The abovesaid reasons given by the petitioners for the delay are being stoutly challenged by the first respondent and in particular, according to the first respondent, the abovesaid reasons are invented by the petitioners for the purpose of this case and disputed the alleged illness of the first petitioner and that he was confined to bed for more than three months and their inability to meet their counsel before the trial

Court and only thereafter, they were able to present the appeal papers etc., and according to the first respondent, all the abovesaid reasons are falsely alleged without any basis and according to him, only with a view to prevent the first respondent from enjoying the fruits of the decree obtained by him in the trial Court, the petitioners have come forward with the appeal with the delay without any justifiable cause and accordingly, prayed for the dismissal of the petition.

6.As above pointed out, it is not the case of the petitioners that they are not aware of the judgement and decree passed by the trial Court. If that be so, if they had really intended to prefer the appeal and contested the matter further, they should have endeavoured to secure the certified copies of the judgement and decree in time and file the appeal papers in time. However, according to the petitioners, on account of the illness of the first petitioner, they were unable to contact the lower Court counsel. However, as regards the alleged illness, the same had been very very vaguely and indistinctly stated in the petition without particulars whatsoever and even the alleged nature of illness said to have been sustained by the first petitioner had not been disclosed. Other than stating that his health condition had deteriorated during the relevant period, as to for what illness the first petitioner had been confined to bed for more than three months and what are the steps taken by him for the

recovery of the same etc., absolutely there are no pleas or materials even prima facie on the side of the petitioners. When the abovesaid cause projected by the petitioners is being stoutly repudiated by the first respondent in particular, one would expect the petitioners at least to place prima facie materials to sustain their case, however, the petitioners have not even placed any sufficient cause for the delay and also not placed any materials whatsoever to buttress the same, even prima facie, and as rightly contended by the first respondent's counsel, even assuming for the sake of arguments that the first petitioner had been suffering from fever, the other petitioners could have easily met the counsel and obtained the certified copies and preferred the appeal in time. On the other hand, the petitioners would only project the illness of the first petitioner for the alleged delay.

7.Considering the materials placed on record, it is found that the petitioners had not been duly endeavouring to prosecute the appeal properly. It is found that they had failed to represent the appeal papers in time and thereby, the delay of 277 days had occurred in representing the papers in time. In view of the abovesaid factors, it is evident that the petitioners have been taking their own time in preferring the appeal and their attitude only disclose that they are no serious in the prosecution of the appeal and accordingly, preferred the appeal with the abovesaid delay

and resultantly, unable to substantiate the alleged cause projected by them even with prima facie materials. In such view of the matter, when there is no cause at all worth acceptance put forth by the petitioners for the delay and despite the challenge put forth to the same, the petitioners having not placed any material whatsoever to sustain the same even prima facie, in such view of the matter, in my considered opinion, the cause alleged by the petitioners for the delay is found to be false, unacceptable and does not merit acceptance.

For the reasons aforesaid, no sufficient cause is alleged by the petitioners for the delay and the same has also not been buttressed by them with acceptable proof, even prima facie, in such view of the matter, the petition is found to be not entitled to for acceptance, resultantly, the petition is dismissed. Consequently, connected A.S.Sr.No.35662 of 2018 is rejected.

Index : Yes / No  
Internet : Yes / No  
sms

27.09.2019

**To**

The Principal District Judge, Kanchipuram @ Chengalpattu.

**Copy to**

The Section Officer, V.R.Section, High Court, Madras.

**T.RAVINDRAN, J.**

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**Pre-delivery Judgment made  
in CMP.No.8512 of 2019  
in  
A.S.Sr.No.35662 of 2018**

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**27.09.2019**