

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

C.R.P.No.2157 of 2014

and M.P.No.1 of 2014

Subramani

... Petitioner

Vs.

1.Saroja

2.Segar

3.Vijayalakshmi

4.Arumugam

... Respondents

Petition filed under Section 115 of the Constitution of India against the fair and decretal order dated 23.10.2013 in I.A.No.93 of 2010 in un-numbered A.S.No. of 2010 on the file of the Principal Subordinate Judge, Puducherry.

For Petitioner : Mr.R.Rajaraman

For Respondents : Mr.J.Srinivasa Mohan (R1)
R2 to R4 - not ready in notice

O R D E R

Challenging the fair and final order passed in I.A.No.93 of 2010 in un-numbered A.S.No. of 2010 on the file of the Principal Subordinate Court, Puducherry, the 1st defendant in O.S.No.217 of 2002 on the file of the Principal Sub Court, Puducherry has filed the above Civil Revision Petition.

2.The 1st respondent/plaintiff filed the suit in O.S.No.217 of 2002 (which re-numbered as O.S.No.1828 of 2006 on the file of the Principal District Munsif Court, Puducherry) for partition and other reliefs. After contest, the trial Court passed a preliminary decree on 23.01.2008. As against the preliminary decree passed by the trial Court, the 1st defendant filed an un-numbered appeal in A.S.No. of 2010 before the Principal Sub Court, Puducherry along with an application in I.A.No.93 of 2010 to condone the delay of 849 days in filing the appeal. In the affidavit filed in support of the petition, the 1st defendant has stated that he was suffering from Blood Pressure, Diabetics and was hospitalized in Chennai, therefore, he could not file the appeal in time. The plaintiff filed her counter and opposed the application. The Lower Appellate Court, taking into consideration the case of both parties, dismissed the application finding that the

petitioner has not explained the reasons for the delay in a proper manner. The Lower Appellate Court also took into consideration the filing of the final decree application in I.A.No.783 of 2009 wherein the 1st defendant appeared before the trial Court and endorsed no objection for the passing of the final decree. Pursuant to the same, the final decree was passed on 14.11.2018.

3.It is settled position that unless the party seeking for condonation of the delay gives sufficient cause for the delay, the delay should not be condoned.

4.In the judgment reported in (2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another] the Hon'ble Supreme Court held that unless the party seeking for condonation of delay gives sufficient cause, the delay should not be condoned.

5.In the case on hand, the petitioner has not given any acceptable reason for the condonation of the delay. Mere averment in the affidavit to the effect that he was taking treatment in Chennai and was hospitalized is not sufficient to accept the said reason. The Lower Appellate Court has rightly dismissed the application. I do not find any merits in the Civil Revision Petition and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge, Puducherry.

2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.J.Srinivasamohan, Advocate SR.86672

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RSI (CO)
CB(22/11/2019)