



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2019

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THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) (MD) No.2349 of 2011

and

M.P(MD) No.1 of 2011

WEB COPY

Pitchaimuthu

... Petitioner/Respondent/Respondent
-Vs-

1.Krishnasamy Naicker

2.Jeyaram

3.Gunasekaran

.. Respondents/Petitioners/Appellants

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the order dated 05.08.2011 passed in I.A.No.110 of 2008 in unnumbered A.S of 2008 by the Principal Sub Court, Dindigul.

For Petitioner : Mr.S.Anand Chandrasekar
for M/S.Sarvabhuman Associates
For R1 to R3 : Mr.A.R.Sethupathy

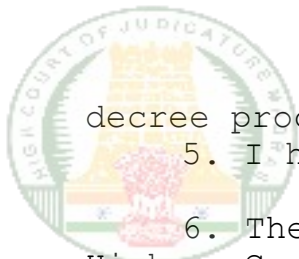
O R D E R

The petitioner challenges the order condoning the delay of 366 days in filing the appeal.

2. The Defendants had sought to challenge the preliminary decree for partition. In the affidavit filed in support of the application for condonation of delay, the respondents herein had stated that the delay has occurred because of the fact that their counsel, who was appearing for them, had left the practice and settled at Karnataka and therefore, they could not follow up the case properly. Though the reason set out was stoutly denied by filing counter affidavit. The petitioner herein, who entered the box, deposed that he has no objection for the Court accepting the reasons set out in the affidavit and condoning the delay. The trial Court, relying upon the said statement, had allowed the application. Aggrieved, the petitioner has come up with this Civil Revision Petition.

3. Heard Mr.S.Anand Chandrasekar, learned counsel appearing for the petitioner and Mr.A.R.Sethupathy, learned counsel appearing for the respondents.

4. Mr.S.Anand Chandrasekar, learned counsel appearing for the petitioner would submit that the Court below was not right in relying upon the statement made in cross-examination to allow the application for condonation of delay. He would also submit that the application lacks bonafide inasmuch as the same counsel, who had settled in Karnataka, had appeared for the respondents in the final



decree proceedings.

5. I have considered the rival submissions.

6. The order condoning the delay is a discretionary order. The Higher Courts must be slow in interfering with the discretion exercised by the lower appellate Court. The lower appellate Court had observed that the petitioner himself has deposed that he has no objection for the petition being allowed. Having made such statement before the lower appellate Court, the petitioner now wants to challenge the order condoning the delay. Even otherwise, the reasons set out in the affidavit appear to be bonafide and constitute sufficient cause for condonation of delay of 366 days. I do not find any material irregularity or jurisdictional error and hence there is no scope for interference with the order of the Courts below under Section 115 of C.P.C., and therefore, the Civil Revision Petition fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Principal Subordinate Judge,
Dindigul.

2. The Record Keeper, V.R.Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

SMA/30/12/19/2P/4C

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