



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:22.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP. (MD) .No.2342 of 2012 (PD)

R.Pulugayeeammal

...Petitioner / Petitioner / Plaintiff
Vs.

1.Bhoopathi

2.Poonudurai

3.Chinna Bhoopathi

...Respondents / Respondents/
Defendants

PRAYER: This Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed by the Subordinate Judge, Sivakasi in I.A.No.07 of 2012 in O.S.No.59 of 2010 dated 09.04.2012.

For Petitioner : Mr.G.Marimuthu

For Respondents : Mr.K.Natarajan

O R D E R

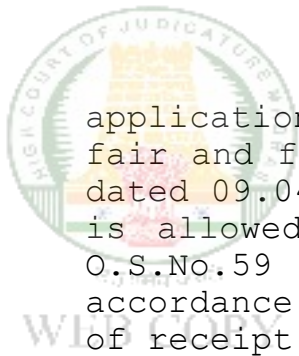
This Civil Revision Petition has been filed challenging the fair and final order passed by the Court below dismissing the application filed by the petitioner to condone the delay of 197 days in preferring the restoration application to restore the suit, which was dismissed for default on 05.04.2011.

2. The petitioner is the plaintiff and she has filed a suit against the respondents / defendants seeking for the relief of partition and to allot her 1/4th share in the property and for other consequential reliefs. The pleadings were completed and issues were framed and the case was at the stage of trial. Due to the absence of the petitioner, the suit was dismissed for default on 05.04.2011. The petitioner filed an application for restoration of the suit with a delay of 197 days. This Condone Delay Petition was dismissed by the Court below.

3. The Court below has dismissed the petition on the ground that the petitioner has not given sufficient reasons explaining the delay.

4. Heard the learned counsel appearing for the petitioner.

5. Taking into consideration the facts and circumstances of the case and also of the fact that the suit for partition has been filed by the petitioner and there was only a delay of 197 days to restore the suit, which was dismissed for default, the Court below ought to have considered the application more leniently and should have decided the suit on merits. The Court below had dismissed the



application by taking a hypertechnical stand. In the result, the fair and final order passed by the Court below in I.A.No.7 of 2012, dated 09.04.2012, is hereby set aside and the Condone Delay Petition is allowed. The Court below is directed to restore the suit in O.S.No.59 of 2010 and dispose of the same on merits and in accordance with law, within a period of three months from the date of receipt of copy of this order.

6. This Civil Revision Petition is accordingly allowed with the above directions. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

tsg

To

1.The Subordinate Judge, Sivakasi

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

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-100615[F] dated
22/11/2019)

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SMA/18/12/19/2P/5C