



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.04.2019

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD)No.744 of 2011 (NPD)

Ganesan Nadar

.. Petitioner / Petitioner
Appellant

Vs.

1.R.Muthammal

.. 1st respondent/1st respondent
1st respondent

2.C.Pathrakali

.. 2nd respondent / 2nd respondent
2nd respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., against the order, dated 30.09.2010, passed in I.A.No.69 of 2010 in unnumbered A.S.No.nil of 2010 by the Subordinate Court, Sankarankovil.

For petitioner : Mr.V.Meenakshisundaram,

For 1st respondent : Mr.F.X.Eugene

For 2nd respondent : No appearance

ORDER

This petition has been filed by the petitioner/first defendant as against the order, dated 30.09.2010, passed in I.A.No.69 of 2010 in A.S.No.nil of 2010 by the first appellate Court, whereby and whereunder the first appellate Court dismissed the petition filed by the petitioner seeking condonation of delay of 393 days in filing appeal suit.

2. It is seen that the first respondent / plaintiff had filed a suit in O.S.No.104 of 2006 for partition. After trial, the trial Court decreed the suit in part. Aggrieved by the the same, the petitioner/ 1st defendant presented an appeal before the first appellate Court. For filing the said appeal, there occurred a delay of 393 days. In order to condone the delay of 393 days, the petitioner/1st defendant filed I.A.No.69 of 2010. The first appellate Court dismissed the said petition holding that the reason assigned by the petitioner/1st defendant is not acceptable. Aggrieved by the same, the petitioner has filed this petition.



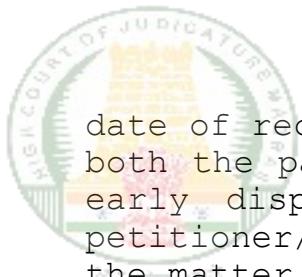
3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent and perused the records carefully. There is no representation for the 2nd respondent.

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4. It is settled law that the condonation of delay is a matter of discretion of the Court. There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay. The length of delay is not material and acceptability of explanation is important. Even the delay of long range can be condoned if the explanation is satisfactory.

5. In this case, the reason assigned by the petitioner for condoning the delay of 393 days in filing the appeal is that the counsel of the petitioner informed him that after receipt of copy of the judgment from the trial Court, he will intimate him and then, he could be present before him for filing appeal and that in the meantime, in the first week of November, 2008, he went to Moonar for eking out his livelihood and only after returning from Moonar, he came to remember about the case and thus, the delay had occurred. At the time of filing the petition, the petitioner was aged about 60 years. This Court is of the view that the reasons stated by the petitioner are somewhat acceptable. However, he has failed to take follow up action. It is seen that the petitioner/1st defendant had diligently conducted the suit before the trial Court. Ordinarily a party does not stand to gain by lodging an appeal belatedly. Refusing to condone a delay will result in meritorious matter being thrown out at the nascent stage and thereby the cause of justice being defeated. On the other hand, if a party is allowed to enter into the scene of main proceedings, then the matter can be decided on merits. Considering the facts and circumstances of the case and length of delay and also considering the fact that it is a suit for partition, the first appellate Court could have liberally considered the petition and granted an opportunity to the petitioners to put forth their case by imposing cost. But, it has failed to do so. Hence, this Court is inclined to allow this petition on terms to meet the ends of justice.

6. In view of the above, this Civil Revision Petition is allowed and the impugned order is set aside and the delay of 393 days is condoned subject to the payment of cost of Rs.5,000/- (Rupees five thousand only) to the first respondent/plaintiff on or before 06.06.2019, failing which this petition shall stand dismissed automatically without any further reference to this Court. On such payment within the time stipulated above, the first appellate Court is directed to number the appeal and dispose of the same on merits and in accordance with law, within a period of six months from the



date of receipt of a copy of this order. It is needless to say that both the parties shall cooperate with the first appellate Court for early disposal of the case. In the event of failure of the petitioner/appellant, the first appellate Court shall proceed with the matter in the manner known to law. No costs.

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Sd/-

Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar(CS)

To

1.The Subordinate Judge,
Sankarankovil.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-61642[F] dated
22/04/2019)

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DS (CS) :08/05/2019/3P/3C