



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2020

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

CRP(NPD).No. 620 of 2020

Subbathal (died)  
Palanisamy

..Petitioner/Plaintiff

Vs

Valliammal (died)  
1.Marimuthu  
2.Karuppusamy  
3.Aarumani  
4.Kaliyappa Gounder  
5.Papathy  
6.Chellammal  
7.Nachathal

.. Respondents/Defendant

(Respondents 4 to 7 were set  
exparte in O.S. No. 42/2007)

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 09.01.2020 made in I.A. No.74 of 2019 in A.S. No. 34 of 2010 on the file of the III Additional District and Sessions Judge, Thiruppur at Dharapuram.

For Petitioner : M/s. A.K.Sridharan

For Respondents : Mr.M.Guruprasad - For R1 to R3  
R4 to R7 - Exparte

O R D E R

The relief sought for in the present petition is against the fair and decreetal order dated 09.01.2020 made in I.A. No.74 of 2019 in A.S. No. 34 of 2010 on the file of the III Additional District and Sessions Judge, Thiruppur at Dharapuram.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 1 to 3 and perused the documents available on record.

3. Brief facts of the case is that the respondents 1 to 3 herein/plaintiffs have filed a suit in O.S.No. 42 of 2007 before



the Sub Court, Dharapuram for Partition against the revision petitioner. The Court below has passed preliminary decree for division of the suit properties into two equal halves and allot one such share in favour of the revision petitioner herein. Aggrieved against the same, the revision petitioner has preferred appeal in A.S. No. 34 of 2010 on the file of the III Additional District and Sessions Judge, Dharapuram. The said Appeal Suit came to be dismissed for default on 30.08.2013. The revision petitioner has filed application to condone the delay of 1568 days in filing the application to restore the aforesaid Appeal Suit. Without considering the reasons stated in the said application, the trial Court has dismissed the same. Hence the present Civil Revision Petition.

4. The learned counsel for the revision petitioner submitted that the petitioner is a lorry driver and used to stay away from the city for 20 to 30 days in a month, he was not able to receive the letter of his advocate. Moreover, the petitioner was looking after his sick mother, therefore he was not having mental capacity to enquire about the case to his advocate. Further, the Highways Department acquired a portion of the suit property and for that the petitioner was asked to receive compensation and only at this juncture, the petitioner came to know that the Appeal was dismissed for default on 30.08.2013 by the Appellate Court. In view of the above reasons, the Appellate Court should have allowed the interim application filed by the petitioner in I.A. No. 74 of 2019, but the said application was dismissed by the Appellate Court.

5. On perusal of the affidavit filed in I.A. No. 70/2019, it is seen that there is no satisfactory explanation stated by the petitioner for the inordinate delay of 1568 days in filing the said application. Further, no sufficient documents were filed to substantiate the reasons, which prevented him to file the said application within a stipulated period. Therefore, in the absence of any satisfactory reasons in the affidavit as well as any materials placed before the Court below, I do not find any reason to interfere with the order passed by the Appellate Court. In my view, the Appellate Court has rightly rejected the application filed by the petitioner.

6. The Hon'ble Supreme Court in the case of H.Dohil Constructions Company Private Limited Vs.Mahar Exports Limited and another, reported in (2015) 1 SCC 680, has held as follows;

"24....The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents no deserving any indulgence by the court in the matter of



WEB COPY

condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered."

7. In the light of the decision of the Hon'ble Supreme Court cited supra and considering the fact that there is no satisfactory explanation by the petitioner for the inordinate delay of 1568 days, I am of the considered opinion that no prima-facie case is made out to interfere with the order passed by the Court below and accordingly, the Civil Revision Petition is liable to be dismissed.

In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition if any, is closed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

ak

To

The III Additional District and Sessions Judge,  
Tiruppur at Dharapurami.

+1cc to Mr.A.K.Sridharan, Advocate SR.No.20089

+1cc to Mr.M.Guruprasad, Advocate SR.No.20111

CRP.No. 620 of 2020

CA(CO)  
GMY(10/07/2020)