IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.2357 of 2018 and
CMP No.14592 of 2018

Subramani ... Petitioner

Vs

1. Nallammal
2. Palaniammal
3. Velumani ... Respondents

Prayer: The Civil Revision petition filed under Section 115 of Code of Civil Procedure, praying to set aside the fair and decreetal order, dated 02.07.2018 made in I.A No.79 of 2017 in IA No.36 of 2015 in Unnumbered AS on the file of the Principal District Judge, Namakkal.

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For Petitioner : Mr.R.Marudhachalamurthy

For Respondents : No appearance

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O R D E R

This revision is directed against an order of the Principal District Judge, Namakkal, condoning the delay of 381 days in seeking restoration of I.A.No.36 of 2015 which is an application for condonation of delay of 156 days in filing an appeal against the Judgment and decree in O.S.No.68 of 2011, a suit for partition.

2. The plaintiffs / respondents herein laid a suit for partition seeking division and separate possession of their 1/3rd share in the suit properties. Upon contest, the suit came to be dismissed by the trial Court. The plaintiffs preferred an appeal along with an application to condone the delay of 156 days in filing an appeal. The said application which was numbered as I.A.No.36 of 2015 came to be dismissed for default. After expiry of about more than a year, the plaintiffs filed I.A.No.79 of 2017 seeking condonation of delay of 381 days in filing an application to restore I.A.No.36 of 2015. The reason assigned for the delay is that the deponent namely the 3rd plaintiff who owns a lorry had gone to North India to eke out his lively hood. It is also stated that the counsel did not inform him about

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the dismissal of the application in I.A.No.36 of 2015 for default. He would also further state that only when he went to the counsel office on 26.07.2017, he was informed that the application was dismissed for default.

3. This application was resisted by the defendant contending that the reasons assigned in the affidavit would not amount to sufficient cause to condone the delay. He would also submit that the petitioner cannot escape by blaming his counsel.

4. The learned Principal District Judge, Namakkal who heard the application concluded that the petitioners / appellants have not made out sufficient cause for condonation of delay. The learned District Judge observed as follows:

> *"Considering the facts and circumstance there is a delay of 381 days in filing the restoration petition. The reason stated by the petitioner seems to be vague. It is settled law that each and every day delay should be explained. Even though this petition is fit for dismissal, in order to give one more opportunity to the petitioner, I am inclined to allow this petition "*

It is this order which is the subject matter of challenge in this revision.

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5. I have heard Mr.R.Marudhachalamurthy, learned counsel appearing for the petitioner. The respondents though served, are not appearing either in person or through counsel duly instructed.

6. Mr.R.Marudhachalamurthy, learned counsel appearing for the petitioner would vehemently contend that once the learned District Judge came to the conclusion that there is no sufficient cause, there is no question of providing an opportunity to the petitioners to prosecute the appeal. He would also contend that the respondents herein cannot be escape by blaming their counsel.

8. No doubt, the learned District Judge has concluded that there was no sufficient cause for the delay. Despite such conclusion, the learned District Judge had exercised his discretion and found that the petitioners should be given an opportunity to contest the case on merits. I do not think that the learned District Judge can be faulted for exercising such discretion. The revisional jurisdiction is not meant for interfering with such discretion exercised by the Courts, that too when the intention is to provide an

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opportunity to the parties to have the mater contested on merits. I do not propose to interfere with the order of the learned District Judge. The revision, therefore, fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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vum

Index: Yes/No
Speaking order / Non speaking order

To:

The Principal District Judge, Namakkal.

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R.SUBRAMANIAN, J.

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