

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.P.No.20401 of 2019

in

A.S.SR.No.60984 of 2019

Thanigachalam

..Appellant

Vs.

1.R.Premkumar
2.G.Ramalingam
3.Dr.R.Senthilkumar

.. Respondent

PRAYER: Civil Miscellaneous Petition filed under Section 5 of the Limitation Act, to condone the delay of 204 days in filing the appeal.

For Petitioner : Mr.K.Sathyaraj

For Respondent : Mr.T.M.Hariharan for R1
Mr.S.Kothandaraman for RR2 & 3
Non-appearance for R4

ORDER

The miscellaneous petition is filed to condone the delay of 204 days in filing the appeal suit against the preliminary decree passed in a suit for partition.

2. The only reason stated in the affidavit filed in support of the miscellaneous petition is that on account of some family commitment, the appellant is unable to file an appeal suit within a time limit. No further reasons have been stated in the affidavit filed in support of the miscellaneous petition.

3. A perusal of the affidavit reveals that the reasons stated are not only flimsy but also unacceptable.

4. The casual approach of the appellant in filing the appeal suit with a delay, without even providing any valid reason, cannot be entertained by the High Court in a routine manner. Long delay, which is unexplained, cannot be condoned and all such enormous delay is to be construed as uncondonable delay. Law of limitation is substantive and the rule is to file the appeal suit within a time limit. Condonation of delay is an exception. Courts, while exercising the discretionary power, must be judicious and to ensure that such delay is condoned, on the basis of sufficient cause, the reasons must be recorded in writing. It is not as if the Courts can condone the delay in a mechanical manner by accepting all such flimsy reasons. The power of discretion is to be exercised discreetly by assigning the reasons based on sound legal

principles. Thus, the parties cannot be encouraged to file the appeal suit, after a prolonged period, in a casual manner and without assigning any genuine reason. In the present case, the appellant has stated that there is a delay, on account of some family commitment. Every family has got its own commitment. Even such a reason has not been substantiated with some acceptable instance and he merely stated that on account of some family commitment, there is a delay in filing the appeal suit. The said reason cannot be accepted and therefore, this Court is of the opinion that the petitioner has not established any sufficient cause for the purpose of condoning the delay of 204 days. Thus, the civil miscellaneous petition stand dismissed and A.S.SR.No.60984 of 2019 stands rejected. No costs.

24.01.2020

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S.M.SUBRAMANIAM, J.

ssb



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