



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P (MD)No.168 of 2020

and

C.M.P. (MD)No.986 of 2020

Arulraj ...Petitioner / Petitioner /
Appellant

-Vs-

1.Jeyamary
Rep. Through her Guardian and
Next friend Michael

2.Johnpeter

3.Minor Johny Michael

Represented by his father / natural
Guardian / 2nd respondent

...Respondents 1 to 3 /
Respondents 1 to 3 /
Plaintiffs 1, 3 and 4

4.Alphonse

5.Arulandhu

6.Agnesprabhu

7.Minor Gnanam

Represented by Guardian /
next friend / 5th Respondent

... Respondents 4 to 7 /
Respondents 4 to 7 /
Defendants 1, 4, 5 & 6

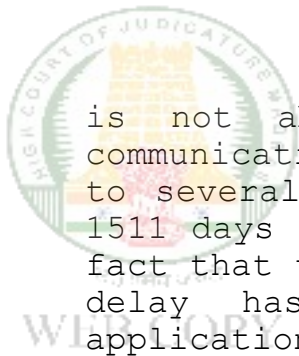
PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, praying to call for the records in I.A.No.11 of 2015 in unnumbered A.S. Of 2015 on the file of the Sub Court, Devakottai and set aside the same.

For Petitioner : Mr.P.Muthusamy

ORDER

This Civil Revision Petition has been filed against the dismissal of the application filed to condone the delay of 1511 days in filing the First Appeal.

2.The revision petitioner is the second defendant in the suit. It is the main contention of the revision petitioner that he



is not able to file the appeal within time and there was communication gap between himself and his Lawyer. Further, he went to several places for his work. Therefore, there was a delay of 1511 days in filing the appeal. The trial Court taking note of the fact that there is no sufficient reason to condone the delay and the delay has not been explained properly, has dismissed the application. Against which, the present Civil Revision Petition is filed.

3.It is the contention of the revision petitioner that he is the subsequent purchaser. Though he was arrayed as second defendant, there was no communication between himself and his Lawyer. He came to know about the decree only at a later point of time. Therefore, there was a delay of 1511 days, hence, an opportunity may be given to the revision petitioner to contest the appeal.

4.Heard the learned counsel appearing for the revision petitioner and perused the entire materials available on record.

5.The suit has been filed for partition. The revision petitioner is the purchaser of the property from the first defendant. It is not the case that he was not aware of the suit, in fact, he was arrayed as second defendant in the suit. The suit is of the year 2004 and was decreed only on 29.10.2010. It is the contention that there was a communication gap between himself and his Lawyer. Therefore, there was a delay of 1511 days. The delay cannot be condoned for a simple reason that having appeared as the second defendant in the suit, the litigant cannot be in lethargic manner to give up his right, he has to watch the proceedings. He must always be vigilant to establish his right before the Court. Mere communication gap between himself and his Lawyer cannot be a ground to condone such huge delay. The purchaser of the property / second defendant will get whatever the first defendant gets out of the suit filed for partition and his rights will always be protected. Therefore, in the absence of any evidence to countenance his reasons, the delay of 1511 days cannot be mechanically condoned. Of course, Section 5 of the Limitation Act has to be liberally interpreted and the approach of the Courts while condoning the delay should be liberal in order to advance substantial justice. At the same time, to extend discretion to give a liberal approach, there must be an acceptable and plausible reason. When the reason appears to be false and baseless, this Court normally, would not extend such discretion only in order to drag on the proceedings. Accordingly, this Court do not find any materials to extend such discretion to condone such huge delay of 1511 days in filing the First Appeal.



6.In the result, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To
The Subordinate Judge,
Devakottai.

+1cc to Mr.P.Muthusamy, Advocate, SR.No.4639

C.R.P(MD)No.168 of 2020

31.01.2020

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