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C.R.P. (PD) No. 1258 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **13.12.2021**

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

C.R.P. (PD) No.1258 of 2019

V.Govindasamy

...Petitioner

Versus

1. Vasanthi
2. Thavasiappan
3. Gettimuthu
4. Rajendran
5. Nithya

...Respondents

Civil Revision Petition is filed under Section 115 C.P.C., to set aside the order and decree dated 07.12.2018 made in I.A. No.65 of 2018 in Unnumbered A.S. in C.F.R. No.4800 of 2018 passed by the learned Principal District Judge, Erode.

For Petitioner : Mr. N.Lakshmanan

For Respondents : Mr. B.M.Subash

ORDER

This Civil Revision Petition is directed against the order passed by the learned Principal District Judge, Erode in I.A. No.65 of 2018 in unnumbered A.S. in C.F.R. No.4800 of 2018.



2. The revision petitioner is the appellant before the lower Court. The suit in O.S. No.107 of 2010 before the Sub Court, Bhavani, was filed by the revision petitioner for partition of petitioner's 9/12th share and for separate possession of the property. The suit is contested by the respondents by filing a written statement. Ultimately the suit was dismissed. Challenging the judgment and decree of the trial Court, the revision petitioner preferred an appeal before the Principal District Court, with a delay of 387 days. The petition filed under Order 41 Rule 3-A and Section 151 C.P.C., to condone the delay of 387 days in filing the appeal was dismissed by the lower Court. Aggrieved by the same, the above Civil Revision Petition is filed by the plaintiff in the suit.

3. In the affidavit filed in support of the petition, the revision petitioner has given adequate reasons. It is stated that the petitioner was bed ridden due to Jaundice from 10.01.2017. It is further stated that the petitioner could not move easily and started taking country medicines. It is further stated that the petitioner could not meet and instruct his counsel to prepare the appeal against the judgment and decree of the lower Court and therefore, the delay is neither wilful nor wanton. The said petition was dismissed by the lower Court merely on the ground that the Court is unable to find any sufficient reasons for the delay. It is observed that the reasons stated by the petitioner is not satisfactory.



The lower Court also given a finding that the delay has not been properly stated by the petitioner in the affidavit.

4. This Court is unable to sustain the order of the lower Court in dismissing the petition to condone the delay of 387 days in filing the appeal. This Court has time and again repeatedly held that the Court in matters like this cannot adopt a pedantic approach. In the present case, this Court is fully convinced that the petitioner has given sufficient reasons for the delay. It is not a case where no reason is stated by the petitioner. When reasons are assigned, it is open to the Court to examine the truth or otherwise of the reasons stated in the petition to condone the delay. In the counter affidavit, the reasons stated by the petitioner were not disputed. However, it is stated by the respondents that reason assigned by the petitioner is not a justifiable one. The petitioner has given sufficient reasons for the delay. This is not a case where the petitioner failed to give any reason. There is nothing to indicate that the delay is wilful.

5. This Court is fully convinced with the reasons stated in the affidavit filed in support of the petition before the lower Court to condone the delay of 387 days. Accordingly, the order passed by the Principal District Judge, Erode, in I.A. No.65 of 2018 in Unnumbered A.S. in C.F.R. No.4800 of 2018, is



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hereby set aside. Though the petitioner has given reasons for the delay, it is seen that the petitioner could have avoided the delay by showing due diligence. Since the delay is 387 days, the respondents have also been put to some hardship. Hence, this Court is inclined to allow the Civil Revision Petition with a direction to the revision petitioner to pay a sum of Rs.5,000/- by way of costs for the delay in filing the appeal.

6. Accordingly, this Civil Revision Petition is allowed with a cost of Rs.5,000/- payable to the respondents. The petitioner shall pay a sum of Rs.5,000/- to the respondents, within a period of two weeks from the date of receipt of a copy of this order. The cost may be paid to the counsel for the respondent before this Court.

13.12.2021

Index: Yes/ No

Speaking Order / Non-Speaking Order

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Copy to:

WEB COPY The Principal District Judge, Erode.



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S.S.SUNDAR, J .,

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