



WEB COPY



C.R.P.(PD).No.2626 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2626 of 2021

and

C.M.P.No.19483 of 2021

N. Chinappa

.. Petitioner

Vs.

Narayana Chetty

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of CPC, praying to set aside the fair and decretal order dated 12.08.2021 passed in I.A.No.4 of 2021 in O.S.No.8 of 2015 on the file of Additional District Judge, Hosur.

For Petitioner : Mr.Mohammed Irfan Ali
for Mr.T.S.Baskaran

ORDER

Challenge in this Revision is to the order of the trial Court condoning the delay of 544 days in seeking to set aside the *ex parte* decree in O.S.No.8 of 2015.



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2. The respondent was the 14th defendant in the suit in O.S.No.8 of 2015. He was arrayed as a defendant on the ground that he has purchased the property, subject matter of the partition suit, from some of the sharers. As 14th defendant, he had filed written statement claiming that the suit itself is collusive one and he has purchased the property on 12.04.2011, even prior to the filing of the suit.

3. According to the respondent, who was the 14th defendant, the suit is collusive one to defeat his rights. Many of the defendants in the suit remained *ex parte* and the suit was contested by defendants 1, 6 to 8 and 14 only. At the time of trial, PW1 was examined and he was cross examined by defendants 1, 6 to 8 and the suit was posted for cross examination by the 14th defendant on 12.03.2018. Since the 14th defendant did not avail of the opportunity, he was set *ex parte* and the evidence was closed. The 8th defendant was examined as DW1 and judgment came to be pronounced on 28.04.2018. Terming the judgment as *ex parte* judgment as against him, the 14th defendant came up with this application seeking condonation of delay of 544 days in seeking to set aside the *ex parte* decree.



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4. According to the 14th defendant, he came to know about the preliminary decree only upon service of notice in final decree application.

According to him, he had suffered dengue fever and confined to his house for more than 6 months and after that he had forgotten about the case and he did not consult his counsel.

5. This application was opposed contending that the reason assigned would not constitute sufficient cause within the meaning of Section 5 of the Limitation Act. It was the further contention that the decree is on merits and therefore the same cannot be set aside. The learned trial Judge who heard the application accepted the reasons assigned as sufficient cause for delay.

6. I have heard Mr.Mohammed Irfan Ali, learnted counsel appearing for the petitioner.

7. Mr.Mohammed Irfan Ali would vehemently contend that the trial Court was not right in accepting the reasons assigned by the 1st respondent for the delay. According to him, the delay is nearly 544 days and the fact



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that the 1st respondent was suffering from dengue and he was confined to his house for 6 months is hardly a reason for condoning such a long delay.

8. Condonation of delay is the discretion of the Court. Such exercise of discretion cannot be interfered with in the Revisional jurisdiction, unless there are very strong reasons for interfering. A perusal of the order of the learned District Judge shows that she had bestowed her attention to the claim and the rival claim and had concluded that 14th defendant should be given an opportunity to contest the case on merits. She had also found the attempt of the 14th defendant as *bona fide* since he filed the application within 15 days from the date of service of notice in I.A.No.1 of 2019, an application for passing of final decree. The learned District Judge has also imposed costs of Rs.15,000/- payable to the plaintiff. I therefore do not see any reason to interfere with the order of the trial Court. The Revision therefore fails and it is accordingly dismissed.

02.12.2021

dsa

Index : Yes/ No

Speaking order / Non-Speaking order



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To

The Additional District Judge, Hosur.

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R.SUBRAMANIAN, J.

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