



C.R.P(PD).No.2617 of 2021
and CMP.No.19437 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD).No.2617 of 2021

and

CMP.No.19437 of 2021

Palanisamy

..Petitioner

Vs.

Raman (Died)
Venkatachalam (Died)

1.Marakkal

2.Appusamy

3.Mariammal

4.Panchayee

5.Chinnathayee

6.Saravanan

..Respondents

Praye: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 03.09.2021 passed in IA.No.01 of 2019 in OS.No.184 of 2012 on the file of the District Munsif and Judicial Magistrate Court, Edappady.

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For Petitioner : Mr.R.Marudhachalamurthy

ORDER

The petitioner challenges the order condoning the delay of 367 days in seeking restoration of the suit made in IA.No.1 of 2019 in OS.No.184 of 2012.

2.The suit was filed by two plaintiffs namely, Raman and Venkatachalam, seeking permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property. Pending suit, 2nd plaintiff / Venkatachalam died and his legal heirs were added as plaintiffs 3 to 7. The suit came to be dismissed on 05.07.2017 for default. The plaintiffs 3 to 7 filed an application for condonation of delay of 367 days in seeking restoration of the suit on 06.08.2018. The reason assigned was that after the death of Venkatachalam, though the plaintiffs 3 to 7 were impleaded as parties, the 1st plaintiff, Raman was looking after the proceedings and it was stated that Raman was affected with Dengue fever and was hospitalized for nearly ten months. Despite such hospitalization, he



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eventually died on 02.12.2017. The plaintiffs 3 to 7 namely, the legal heirs of the 2nd plaintiff /Venkatachalam were not aware of the stage of the proceedings and only recently they came to know about the dismissal of the suit for their non-appearance.

3.This application was resisted by the defendants claiming that the plaintiffs were negligent in conduct of the suit and therefore, they are not entitled to an order condoning the delay. The learned Trial Judge, upon a consideration of the averments in the affidavit filed in support of the application and taking into account the fact that both the plaintiffs, who had instituted the suit had died pending suit found that the petitioners / plaintiffs 3 to 7 have shown sufficient cause for condonation of delay. On such finding, the learned Trial Judge condoned the delay.

4.Heard Mr.M.Marudhachalamurthy, learned counsel appearing for the petitioner.



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5.Mr.M.Marudhachalamurthy, learned counsel appearing for the petitioner would vehemently contend that the Trial Court was wrong in condoning such undue delay on a very frivolous explanation. I am unable to concur with the submission of the learned counsel. The fact that the 2nd plaintiff died pending suit and his legal heirs were brought on record is not denied. The 1st plaintiff also died pending suit. The petitioners before the Trial Court have stated that after the death of the 2nd plaintiff, the 1st plaintiff / Raman was looking after the suit and unfortunately, he also died therefore, the plaintiffs 3 to 7, who were impleaded as legal heirs of the deceased 2nd plaintiff were not aware of the suit proceedings. This explanation has been accepted by the Trial Judge in exercise of his discretion. I do not see any reason to interfere with such exercise of discretion by the Trial Court. Hence, this civil revision petition fails and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

30.11.2021

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To:-

The District Munsif-cum-Judicial Magistrate,
Edappadi.



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R.SUBRAMANIAN, J.

KKN

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