

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2021

CORAM

The Hon'ble Mr.Justice Krishnan Ramasamy

CRP (NPD)No.1637 of 2017

and

C.M.P.No.7733 of 2017

Rani

... Revision Petitioner

VS.

1.Sellappan
2.Sankar
3.Chenrayan
4.Vasanthi
5.Parvathi

...Respondents

PRAYER:

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal order dated 04.01.2017 made in I.A.No.63 of 2016 in O.S.No.59 of 2007 on the file of Learned Additional Special Judge, Krishnagiri and to allow the above Civil Revision Petition.

For Revision Petitioner
For Respondents

- Mr.P.S.Prabhu
- Mr.D.Ramesh Kumar
No appearance

ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.No.63 of 2016 in O.S.No.59 of 2007, on the file of the Additional Special Judge, Krishnagiri, dated 04.01.2017.

2. The first defendant in the above suit is the revision petitioner herein. The respondents herein filed the suit for the relief of partition against the revision petitioner/first defendant and three others. In the said suit, a preliminary decree was passed, dated 21.06.2010, in which, the defendants were set ex parte. Against the said ex parte decree, the revision petitioner filed an Interlocutory Application in I.A.No.63 of 2016, to condone the delay of 1809 days in filing the Application to set aside the exparte decree.

3. The Court below, after hearing both the sides dismissed the Application. Challenging the same, the present Civil Revision Petition is filed.

4. When the Civil Revision Petition came up for hearing on

18.08.2021, the learned counsel for either sides were present and the learned counsel appearing for the respondents made a submission before this Court that in the main suit, final decree has been passed and hence, this Civil Revision Petition has become infructuous, however, sought time to ascertain the same and report before the Court. Heeding to the said request, the Civil Revision Petition was directed to be listed on 03.09.2021 (i.e. today).

5. Accordingly, the Civil Revision Petition is listed today, none appeared for the respondents.

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

7. On a perusal of the order passed by the Court below, it is seen that the Court below passed a detailed order, and at this stage, it would be appropriate to extract the operative portion of the said order, which reads as follows:-

“ On perusal, the petitioner has not produced any

documents in proof of her allegations. The petitioner has not examined herself in order to prove her allegations in the Petition. The petitioner ought to have followed her case and now, at this stage of the final decree petition being posted for filing of the Commissioner Report, the petitioner is not entitled to file petitions of this sort and moreover, the reason stated by her is not convincing this Court and is not a sufficient reason for condoning the inordinate delay of 1809 days. The petitioner has not examined any other witnesses also, in order to prove inordinate delay and in allowing this petition and the respondents have also voluntarily objected to allow this petition. In the absence of sufficient evidence, this court infers that the petition filed by the petitioner is devoid of merits, highly belated, not maintainable, not proved through sufficient evidence and has to suffer a dismissal. The petition is dismissed".

8. Thus, the order passed by the Court below is a speaking order and the Court below proceeded to dismiss the Application only the ground that the revision petitioner has not produced any documentary evidence in order to prove her allegations or she examined herself to substantiate her allegations. Further, the revision petitioner has not provided cogent reasons to condone

the delay and the reasons given by the revision petitioner were not sufficient and convincing, and only under these circumstances, the Court below dismissed the Application for condonation of delay.

9. When the revision petitioner is not in a position to explain the delay of 1809 days, the Court below cannot be expected to come forward to condone the delay. In fact, the Hon'ble Supreme Court, in a decision reported in **CDJ 2021 SC 059** in the case of **(State of U.P. and others Vs. Sabba Narain and others)** held that each and every delay, requires to be explained by the party, who files the condone delay Application and in the absence of sufficient reasons, the delay should not be condoned.

10. Thus, in view of the above and also taking into consideration that the revision petitioner, in a casual manner approached the Court without any cogent reason or plausible ground for condonation of delay and other than the lethargy and incompetence of the revision petitioner, there is nothing put on record to condone the delay, this Court is of the view that no indulgence should be shown to the revision petitioner, to condone the delay of

1809 days. In fact, this Court opined to impose cost on the revision petitioner for having been lethargic in filing the Application, however, considering the fact that the Suit has already been disposed of, is not inclined to do so.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

03.09.2021

Index: Yes/No
Speaking/Non-speaking Order
jd/sd

To
The Additional Special Judge, Krishnagiri.



WEB COPY

Krishnan Ramasamy, J.,
sd

**CRP (NPD)No.1637 of 2017
and
C.M.P.No.7733 of**

2017



03.09.202

1

सत्यमेव जयते

WEB COPY