

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2021

CORAM

**THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN**

CRP.PD.Nos.1950 & 2128 of 2017

Padma .. Petitioner/Plaintiff in both CRPs

Vs.

1.A.G.Poovaraghavan

2.Rajammal

3.R.Palanisamy

4.K.Chinnapaiyan

5.T.Manonmani

6.P.Appusamy .. Respondents/Defendants in CRPs

**Prayer in CRP.No.1950/2017** : The Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the petition and order dated 16.11.2016 passed in I.A.No.1438/2013 in O.S.No.168/2006 on the file of the I Additional District Munsif Court at Salem and allow the above C.R.P.

**Prayer in CRP.No.2128/2017** : The Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and final order dated 16.11.2016 passed in I.A.No.290/2015 in O.S.No.168/2006 on the file of the I Additional District Munsif Court at Salem and allow the above C.R.P.

For Petitioner : Mr.R.Nalliyappan

(in both CRPs)

For Respondents : R1 – not ready in notice  
(in both CRPs) Mr.T.S.Vijaya Raghavan  
[R2 to R6]

**COMMON ORDER**

These Civil Revision Petitions are filed against the order dated 16.11.2016 in I.A.No.1438/2013 in O.S.No.168/2006 and I.A.No.290/2015 in O.S.No.168/2006 on the file of the I Additional District Munsif Court, Salem.

2. In both these Civil Revision Petitions, the petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit for mandatory injunction directing the respondents to remove the gate put up in front of the suit cart tract and to remove the fence and other materials that dumped in the middle of the suit cart tract. The petitioner also sought for the prayer for permanent injunction restraining the respondents from obstructing the petitioner from exercising the right of way through the suit cart tract. When the suit was taken for trial on 01.04.2009, the petitioner failed to appear before the Court below, therefore, the suit was dismissed for default on 01.04.2009.

The petitioner filed a petition in I.A.No1438 of 2013 to restore the suit

with the delay of 179 days in filing the restoration petition. On perusal of the affidavit in support of the said petition, the reason stated that the petitioner was suffering from Jaundice and she was unable to move anywhere and the doctor advised her the bed-rest. Therefore, she could not able to meet her counsel. The said petition was returned for want of some corrections.

It was represented with the delay of 1535 days in another petition in I.A.No.290 of 2015 in representing the condone delay petition to restore the suit. On perusal of the affidavit filed in support of the representation delay petition, the petitioner stated that there was a delay of 1535 days in filing the representation petition and except the said reason no other sufficient reason mentioned in the affidavit.

3. In fact, the suit was filed to remove the obstruction put up by the respondents in the cart tract which is used by the petitioner. Therefore, there was an urgency to file the suit. When being so, thereafter, the petitioner did not pursue the suit for the past 9 years, since the suit was filed in the year 2006. It was dismissed for default on 01.04.2009. Thereafter, the petitioner filed the petition to restore the suit with the

**G.K.ILANTHIRAIYAN,J.**

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delay of 179 days. The said petition was returned and the same was represented only after 1535 days that too without any sufficient cause for the delay. It shows that the petitioner has no interest to pursue the suit and as such, the Court below rightly dismissed the petition to condone the delay in representation.

4. In view of the order passed in the representation delay petition, the condone delay petition in filing the restore petition is also dismissed. Therefore, this Court finds no infirmity and illegality in the order passed by the Court below and accordingly, both the Civil Revision Petitions are dismissed. No order as to costs.

**17.02.2021**

Index : Yes/No

Internet : Yes/No

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To

I Additional District Munsif Court,  
Salem.

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