

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

CORAM

The Hon'ble Mr.Justice Krishnan Ramasamy

C.R.P (NPD)No.3869 of 2017

and

C.M.P.No.18049 of 2017

Mrs.Krishnaveni

.. Revision Petitioner/5th defendant

vs.

Mr.Karunanithi

..Respondent/Plaintiff

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.390 of 2011 in O.S.No.390 of 2004 dated 03.08.2017 passed by the Learned District Munsif at Perambalur.

For Revision Petitioner - M/S.S.Ilamurugu

For Respondent - Mr.K.Ezilarasan for
M/s.E.K.Kumaresan

ORDER

This Civil Revision Petition has been filed challenging the order passed in I.A.No.390 of 2011, in O.S.No.390 of 2004 on the file of the District Munsif Court at Perambalur , dated 03.08.2017.

2. The suit in O.S.No.390 of 2004 was filed by the respondent for the relief of partition. In the said suit, the revision petitioner has been impleaded as fifth defendant. Due to non appearance of the revision petitioner, she was set ex parte. Therefore, she filed an Interlocutory Application in I.A.No.390 of 2011 to condone the delay of 813 days in filing the Application to set aside the said exparte decree. The reason assigned by the revision petitioner for the delay was due to her illness, as she was suffering from jaundice, she was not able to contact her lawyer and give proper instructions in time. However, the Court below was not satisfied with reasons assigned by the revision petitioner and dismissed the Application. Challenging the same, the present Civil Revision Petition is filed.

3. Heard the learned counsel appearing for the revision petitioner and learned counsel for the respondent and also perused the materials available on record.

4. When the Civil Revision Petition came up for hearing today, it was also brought to the knowledge of this Court by the learned counsel for the respondent that the main suit itself is dismissed for default. However, the learned counsel for the revision petitioner submitted that the respondent has filed an application in I.A.No.640 of 2018, in O.S.No.390 of 2004 for restoration of the suit and, in the event of the suit is restored, her right would be prejudicially affected, if the delay in filing the application to set aside the exparte decree is not condoned.

5. The suit was filed for partition, and the same was dismissed for default and no preliminary decree was passed. The respondent/plaintiff has filed application for restoration of the suit and the same is pending. Under these circumstances, if the delay in filing the application to set aside the exparte decree is condoned, and the revision petitioner is permitted to

participate in the proceedings, nobody's interest would get prejudiced. Therefore, in the interest of justice, this Court is inclined to condone the delay and set aside the order passed by the Court below.

6. Accordingly, the Civil Revision Petition is allowed, and the order passed by the Court below is set aside, however, subject to the condition that if the application filed by the respondent for restoration of the suit is allowed and the suit is restored to file. No costs. Consequently, connected Miscellaneous Petition is closed.

13.09.2021

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

To
The District Munsif Court, Perambalur.

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Krishnan Ramasamy, J.,
jd/sd



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