



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :23.03.2021

CORAM

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**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

C.R.P. (MD)No.1773 of 2010 (NPD)

and

M.P(MD)No.1 of 2011

S.Pandiaraj

.. Petitioner

Vs.

1.S.Mariappan (Died)

2.S.Arunachala Thevar

3.A.Sangu Thevar

4.Tamil Selvi

5.Seethaiammal

R4 & R5 are brought on record as Lrs of the deceased R1 vide Court, dated 25.06.2021 made in CMP(MD)No.12452 and 12453/2019 in C.R.P. (MD)No.1773 of 2010 (NPD))

.. Respondents

**Prayer:** Civil Revision Petition is filed under Article 115 of the Civil Procedure Code, to set aside the Fair and Decreetal order made in I.A.No.263 of 2009 in unregistered A.S.No. Of 2009 by the Principal District Judge, Tirunelveli dated 02.07.2010.

For Petitioner : Mr.Mohammed Haneef  
for Mr.D.Venkatesh  
For Respondents : No appearance

**O R D E R**

This Civil Revision Petition has been filed against the order of the learned Principal District Judge, Tirunelveli refusing to condone the delay of 1126 days in filing the appeal.

2. The original suit in O.S.No.181 of 2002 was filed by the respondent herein for specific performance of an agreement of sale, dated 21.04.2001 executed by the third defendant in the



suit, who is the father of the petitioner. The suit was filed against the petitioner, his father and his brother. The petitioner and his father remained ex-parte. One Arunachala Thevar, who is the brother of the petitioner, alone contested the suit. The suit was ultimately decreed on 09.10.2006. The petitioner had filed an appeal against the said decree with a delay 1126 days. The petitioner sought to explain the delay claiming that his wife gave birth to twin babies around the time when the suit was decreed ex-parte. He was completely held up in the treatment of the children, who had certain health complications even at the time of birth. According to him, he came to know of the ex-parte decree itself only on receipt of notice in E.P.No.192 of 2008. The learned Principal District Judge, who heard the application, concluded that the reasons assigned does not constitute sufficient cause for condonation of delay. The learned Principal District Judge was also of the opinion that the appeal itself is filed only to delay the execution proceedings. On the above findings, the learned Principal District Judge dismissed the application for condonation of delay. Hence, this Civil Revision Petition has been filed.

3. I have heard Mr.Mohamed Haneef, learned counsel appearing for the petitioner. The respondents though served have not entered appearance either in person or through counsel, duly instructed.

4. The first respondent died, pending the revision and his legal representatives were brought on record as respondents 4 & 5.

5. Mr.Mohamed Haneef, learned counsel appearing for the petitioner would vehemently contend that the appellate Court was not right in dismissing the application solely on the ground that the Execution Proceedings is in advanced stage. According to him, the reasons assigned by the petitioner has not been disputed or denied. He would also submit that this Court and the Honourable Supreme Court have time and again pointed out that the Courts should adopt a liberal approach in matters of delay, particularly, the delay in filing the appeal. Unless the delay is shown to be *mala fide* and the person causing delay had obtained certain advantage because of the delay, the Courts in normal course should condone the delay.

6. The learned counsel appearing for the petitioner also relied upon the judgment of **University of Delhi Vs Union of India and others reported in 2019 SCC online 2634** and would contend that the approach of the appellate Court in considering the delay is against the verdict of the Hon'ble Supreme Court.



7. I have considered the submissions of the learned counsel for the petitioner.

8. The appellate Court has not found that the reasons assigned by the petitioner is false. In the absence of such finding, the appellate Court was not right in concluding that the attempt of the petitioner is malafide. The suit is one for specific performance. The respondents cannot claim to have vested right in legalising injustice. Once the reasons assigned are not found to be false and it cannot be said that the petitioner has caused the delay with a malafide intention, the delay ought to be condoned. I am, therefore, unable to confirm the order of the learned Principal District Judge, Tirunelveli.

9. In view of the above, this Civil Revision Petition is allowed and the order of the learned Principal District Judge, Tirunelveli in I.A.No.263 of 2009 is set aside and the delay of 1126 days in filing the appeal is condoned. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

am  
To

The Principal District Court,  
Tirunelveli.

+1 CC to M/s.D.VENKATESH, Advocate ( SR-13268[F] dated  
24/03/2021 )

**Order made in**  
**C.R.P. (MD)No.1773 of 2010(NPD)**  
**23.03.2021**

ac(CO)  
TR(24.04.2021) 3P 3C