



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (MD)No.489 of 2014

and

M.P. (MD)No.1 of 2014

M/s.Tatanavar Brothers (Mine Owners),
through its Manager, Pelcom,
Karnataka.

: Petitioner /Petitioner/
2nd Defendant

Vs.

Shanmugam

: Respondent/Respondent/
Petitioner

PRAYER:- Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the order passed in I.A.No.106 of 2013 in O.S.No.389 of 2008, dated 21.08.2013, on the file of the Additional District Munsif Court, Tenkasi.

For Petitioner
For Respondent

:Mr.T.S.Mohammed Mohideen
:No appearance

ORDER

This revision has been filed against the order dismissing the application seeking to condone the delay of 326 days in filing the application to set aside the *ex parte* decree.

2.The suit in O.S.No.389 of 2008 was filed by the respondent seeking declaration of title and mandatory injunction directing the defendants to remove the windmill erected in the suit property.

3.It appears that the suit came to be decreed *ex parte* on 05.10.2009 for non filing of written statement. The instant application has been filed on 11.11.2010 seeking condonation of delay of 326 days. The reason assigned is that the Manager of the second defendant/petitioner suffered from fever and he was unable to move about. The learned Trial Judge dismissed the application concluding that the reason assigned is insufficient to condone the delay of 326 days.



4.I have heard Mr.T.S.Mohammed Mohideen, learned Counsel for the petitioner. Despite service, the respondent is not appearing either in person or through Counsel duly instructed.

5.Mr.T.S.Mohammed Mohideen, learned Counsel for the petitioner would vehemently contend that the trial Court must have taken lenient view considering the fact that the petitioner is operating from Karnataka and the logistics made it very difficult for them to prosecute the proceedings before the District Munsif at Tenkasi. He would also submit that in the absence of a finding to the effect that the application has been filed belatedly with an ulterior object, the trial Court was not justified in refusing to condone the delay.

6.He would also draw my attention to the judgment of Honourable Supreme Court in the case of **University of Delhi vs Union of India**, reported in **2019 SCC Online 1634**, wherein, the Honourable Supreme Court, after referring to the judgment in **Collector, Land Acquisition, Anantnag vs Katiji**, reported in **AIR 1987 SC 1353**, held that the Court must always adopt liberal approach in matters of delay, that too when the valuable civil rights are involved. According to the learned Counsel for the petitioner, the Honourable Supreme Court had also pointed out that the delay should be ordinarily condoned, unless it is shown that the party causing the delay and has obtained distinct economic or other advantage because of the delay.

7.In the light of the principles laid down in the judgments of the Honourable Supreme Court referred to above, I am of the opinion that the trial Court was not right in adopting a very strict approach and concluding that the petitioner has not explained the delay properly.

8.In view of the above, this revision petition is allowed and the order in I.A.No.106 of 2013 is set aside and I.A.No.106 of 2013 will stand allowed. The trial Court is required to number the application under Order 9 Rule 13 CPC and dispose of the same in accordance with law.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To மேலுள்ள

WEB COPY

1.The Additional District Munsif,
Tenkasi.

2.The Section Officer-2 copies
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.T.S.MOHAMED MOHIDEEN, Advocate (SR-374[F] dated
06/01/2021)

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