



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Civil Appellate Jurisdiction )

Thursday, the Sixteenth day of December Two Thousand and Twenty One

PRESENT

**The Hon`ble Ms.Justice P.T.ASHA**

CMP(MD) No.9920 of 2021

IN

CRP(MD) No.2077 of 2017

1 BHAGYAM

2 SELVA SUBBURAJ

... PETITIONERS/ PETITIONERS

Vs

LAKSHMIKANTHAN (DIED)

1 PANCHAVARNAM

2 SUDHA

3 BHARATHI

... RESPONDENTS/ RESPONDENTS

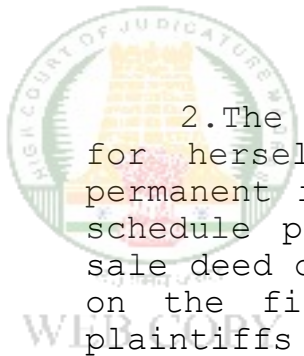
Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 8 days in filing the Civil Revision Petition and thus render justice.

**PRAYER IN CRP(MD) No.2077 of 2017:**

To allow this Civil Revision Petition thereby to set aside the fair order and decretal order dated 05.04.2013 made in I.A.No.36 of 2012 in A.S.No.5 of 2011 on the file of the Subordinate Court, Uthamapalayam.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.S.MUTHUMALAI RAJA, Advocate for the petitioners and of Mr.M.S.JEYAKARTHIK, Advocate on behalf of the Respondents, the court made the following order:-

This petition is filed to condone the delay of 8 days in filing an application to set aside the dismissal order in CRP(MD) No.2077 of 2017 on 31.07.2020.



2.The first plaintiff would submit that she had filed a suit for herself and on behalf of the minor second plaintiff for permanent injunction against the defendant with respect to the suit schedule property, which was purchased by the plaintiffs under a sale deed dated 02.02.1994. The suit in O.S.No.20 of 2002 was filed on the file of the District Munsif Court, Uthamapalayam. The plaintiffs case is that the defendant had started disturbing their possession stating that he had purchased the property in a Court auction sale pursuant to the execution petition filed in a suit in which the decree had been passed against one Ayyammal. The plaintiffs further case is that the property had been purchased by them, even before the execution proceedings and therefore, they are the bona fide purchaser. The trial Court had dismissed the suit. Challenging the same, they had filed A.S.No.5 of 2011 on the file of the Subordinate Court, Uthamapalayam. When the appeal was posted for arguments, the first plaintiff had fallen sick and was unable to contact her Advocate to give him instructions. Therefore, her counsel had reported no instructions and the appeal suit was dismissed on 21.07.2011. The plaintiffs therefore filed I.A.No.36 of 2012 to set aside the dismissal order with a petition to condone the delay of 340 days. However, this application was dismissed.

3.Challenging the same, the plaintiffs had filed the revision before this court and here again the revision was dismissed for non prosecution on 31.07.2020 and the first petitioner was unable to meet her counsel due to COVID-19 pandemic. It was only in October 2021, she had received the bundle from her lawyer and thereafter she had filed this petition through another lawyer. In the process, there is a delay of 8 days in filing the petition to set aside the dismissal order dated 31.07.2020. She would submit that the delay is only due to the aforesaid reasons and the same has to be condoned and the revision may be restored, otherwise she would suffer grave prejudice.

4.A detailed counter has been filed by the respondents and a reading of which would show that the innocuous delay of 8 days, which is now projected, is one of the several delays. The respondents would submit that the suit property originally belonged to one Palaniyandi from whom one Suruli had purchased the same on 09.06.1953. After the demise of Suruli, there was a partition in the family on 05.09.1994 and under the partition deed of the said date, the suit property was allotted to Suruli's wife Ayyammal. The respondents would submit that first respondent's husband had filed a money suit against the said Ayyammal, which was decreed in his favour and in execution of the decree, the suit property was attached and brought to sale in E.P.No.131 of 1997. In the auction sale, Lakshmikanthan had purchased the property on 13.04.1998 and the sale certificate dated 16.07.1998 was issued and the possession was also handed over to the said Lakshmikanthan by order dated 25.09.1998 in E.A.No.187 of 1998 and from that date, they have been in possession and enjoyment of the property.



5.It is their case that the petitioners herein had attempted to cause disturbance in the enjoyment of the suit property by Lakshmikanthan, which had forced him to file a suit in O.S.No.261 of 1998 on the file of the District Munsif Court, Uthamapalaym. The petitioners in turn had filed the suit for declaration in O.S.No.20 of 2002. The two suits were tried together and the suit in O.S.No.261 of 1998 was decreed and O.S.No.20 of 2002 was dismissed and an appeal was preferred by the petitioners herein to the said judgment and decree. Though the appeal was filed in time, the petitioners had taken a return of the appeal papers and re-presented it only with the delay of 735 days. The delay was condoned and the appeal was numbered as A.S.No.5 of 2011 by the Sub Court, Uthamapalyam. The petitioners did not contest and conduct the appeal and after giving them several opportunities, the appeal was dismissed for default on 20.07.2011. The petitioner filed I.A.No.36 of 2012 to restore the above appeal with the delay of 350 days. Since sufficient reason were not given, the Sub Court, Uthamapalyam, had dismissed the said application. Thereafter, the petitioner had filed civil revision petition with the delay of 965 days. The petition was returned on 29.04.2016 for setting right certain defects and once again returned on 31.05.2016. The said petition was re-presented with the delay of 240 days. This delay was condoned and the revision was numbered. Once again, there is no representation and the revision came to be dismissed for non prosecution on 31.07.2020. For over a year, no petition to restore the revision had been numbered and brought up. Therefore, the learned counsel would submit that the petitioner was habitually committing a default and all the petitions are filed only with an inordinate delay. The delay, if calculated from the date of the dismissal of the appeal, would be over 2260 days.

6.Heard the learned counsel on either side and perused the records.

7.As pointed out by the learned counsel for the respondents, the delay though shown as 8 days in this petition is one of the several delays and in all, the petitioners have committed a delay of over 2260 days, which is an inordinate delay and which shows the manifest indifference on the side of the petitioners to prosecute the proceedings which have been initiated by them. The petitioners have shown total indifference in this regard. The Court has condoned the delay at every stage which appears to encourage the petitioners not to prosecute the suit further and keep it pending. The petitioners have therefore not shown sufficient cause for condoning the delay and on the contrary, the respondents have been able to demonstrate to the Court that an indulgence which is going to be shown by the court would only create grave hardship and prejudice to the respondents. The petitioner has shown supine indifference in prosecuting the proceedings.



8. In the above circumstances, this Civil Miscellaneous Petition is dismissed.

sd/-  
16/12/2021

/ TRUE COPY /

WEB COPY

/ /2022  
Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

TO  
THE SUBORDINATE JUDGE,  
UTHAMAPALAYAM.

+1CC to M/s.M.S.JEYAKARTHIK, Advocate (SR-39129[F] dated 16/12/2021)

ORDER  
IN  
CMP (MD) No.9920 of 2021  
IN  
CRP (MD) No.2077 of 2017  
Date :16/12/2021

CP  
MS/VR/SAR-1/19.01.2022/4P.3C