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A.No.300 of 2022
in C.S.No.81 of 2008

V. BHAVANI SUBBAROYAN, J.

Application No.300 of 2022 has been filed to condone the delay of 4416 days in filing the Written Statement in C.S.No.81 of 2008.

2.The applicant has filed this application and submitted that the respondents/plaintiffs are the legal heirs of his brother Mr.K.S.M.Mohamed Ashra, who had pre-deceased his parents viz., Mr.Haji K.S.M.Mohamed Kasim and late Sherifamma. As per the Muslim Personal Law, a pre-deceased son shall not be entitled to any share in respect of his parents. On this legal bar, the plaintiffs are not entitled to claim partition to the estate of Mr.Haji K.S.M.Mohamed Kasim and late Sherifamma.



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3.The applicant further submitted that during the lifetime of Mr.Haji K.S.M.Mohamed Kasim and late Sherifamma, provisions were made to the plaintiffs. The respondent/plaintiff had never complained or claimed any share after the demise of his father Mr.Haji K.S.M.Mohamed Kasim during 2000. The suit properties had been settled by late Sherifamma during her lifetime on different occasions in 2005 as well as 2006 before the Registrar of Assurances.

4.According to the applicant, the summons were served upon this petitioner, thereafter elders and well-wishers had intervened and had impressed upon the respondent/plaintiff to give up their false claim and to preserve the family harmony and not to precipitate the issue further. It was also advised that the suit may be withdrawn, so as to have peace and tranquility among the members of the family. The plaintiffs had agreed to withdraw the suit but did not chose to do so.



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5.It was stated by the applicant that in order not to precipitate the issue further none of the defendants had filed their Written Statement. As the plaintiff did not withdraw the suit, the applicant realized the intention of the respondent/plaintiffs that they do not have a mindset to give up their unlawful claim. There has been a delay of 4416 days in filing the Written Statement. Non-filing of the Written Statement is neither wilful nor wanton but for the bonafide reasons stated above.

6.The first defendant has filed a counter wherein it has been stated that she deny all those allegation and averments contained in the affidavit filed in support of the above application except those that are all specifically admitted herein and put the applicant/1st defendant into the strict proof of the same.

7.The first defendant submitted that she filed the above suit for declaration that the settlement deeds bearing Doc.No.4041 of 2005 dated



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06.10.2005 on the file of the Sub Registrar of Assurances, Chennai bearing

Doc.No.2230 of 2006 and No.2231 of 2006 dated 07.11.2006 on the file of the

Joint I Sub Registrar of Assurance, Dindigul favouring the defendants 1 to 4

respectively in respect of the suit schedule property as null and void having

been obtained under undue influence from late Sherifamma and for further

declaration.

8.The first defendant further submitted that the reason for the delay had also not been explained and non-filing of the Written Statement in the above suit. The applicant had not furnished any relevancy of the document in support of delay of 4416 days in filing the Written Statement as stated in the affidavit and as such the application is liable to be dismissed with exemplary cost.

9.Heard Mr.Zaffarullah Khan, learned counsel for the applicant and Mr.C.T.Mohan, learned counsel for the respondents.



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10.Learned counsel for the respondents has no serious objection in allowing this application.

11.Having satisfied with the reasons stated in this affidavit filed in support of this application, this application is allowed as prayed for.

12.Considering the submission made by the learned counsel on either side, this Court is inclined to allow the application. Accordingly, this application is allowed only on payment of cost of Rs.30,000/- to be paid to Little Flower Convent Higher Secondary School for the Deaf, Near Gemini Flyover, Chennai as well as Rs.10,000/- to be paid to Advocate Clerks Association, Madras High Court on or before 13.04.2022, failing which the application would be stand dismissed automatically without any further reference to this Court.



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13."For Reporting Compliance", post the matter on 18.04.2022.

24.03.2022

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