



CRP.No.346 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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1.P.Nachammal

2.P.Muthulakshmi

... Petitioners

Vs.

Ponnusamy Gounder (Died)

1.P.Nachimuthu

2.K.Anandaraj

3.K.Anandakumar

4.K.Puspha Lakshmi

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 26.10.2021 passed in I.A.No.273 of 2018 in O.S.No.293 of 2015 on the file of the Principal District Munsif Judge, Triuppur.

For Petitioners : Mr.K.Myilsamy

For Respondents : Ms.E.Yuvarani

for Mr.Deepan Uday for R1

: R2 to R4 -No appearance



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ORDER

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This Civil Revision Petition is filed, challenging the order passed by the Court below dismissing the petition to condone the delay of 95 days in filing a petition to restore the suit, which was dismissed for default.

2. According to the learned counsel for the petitioners, the petitioners filed a suit for partition and the same was dismissed for default on 30.06.2017 and they filed a petition to restore the suit with the delay of 95 days.

3. The respondents 2 to 4 were served notice and their names are printed in the cause-list, but there is no representation for them.

4. Heard, the learned counsel for the petitioners and the learned counsel for the first respondent.

5. In the affidavit filed in support of condone delay petition, the petitioners have stated that at the relevant point of time, the first petitioner,



who was in-charge of prosecuting the case was affected by viral fever and hence, she could not approach the Lower Court's counsel and give suitable instruction for prosecuting the case. The Court below dismissed the condone delay petition by pointing out a discrepancy in the affidavit filed in support of condone delay petition with regard to the date of recovery.

6. The reading of the affidavit makes it clear that the petitioners pleaded illness as a reason for their non-appearance on the date of dismissal of suit for default on 30.06.2017. In the affidavit, the date of recovery was mentioned as April 2017. The learned counsel for the petitioners submitted that the date of recovery is wrongly mentioned as April 2017 in the affidavit and the same is only a typographical error.

7. Considering the facts and circumstances, the length of the delay in filing the petition to restore the suit is only 95 days and the nature of relief sought for in the suit, this Court feels that the substantial rights of the parties need not to be denied by putting technicalities against him. It is settled law that when there is a conflict between procedural technicalities and



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substantial justice, later shall prevail. Therefore, I am inclined to allow this petition by setting aside the order passed by the Court below, dismissing the I.A.No.273 of 2018 filed to condone the delay of 95 days in filing a petition to restore the suit, which was dismissed for default.

8. The Civil Revision Petition is allowed on condition that the petitioners shall make a payment of Rs.2,000/- to the counsel, who appears for the first respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
dna



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WEB COPY **To**

The Principal District Munsif Judge, Triuppur.



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S.SOUNTHAR, J.

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