



C.R.P.(NPD)No.646 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.646 of 2015
and M.P.No.1 of 2015

1.Subbu @ Subramani

2.Pappayee

.. Petitioners

Vs.

1.Veerammal (died)

2.Thirumayee

(R2 legal heir of the deceased 1st respondent
viz., Veerammal as per memo dated 15.12.2021
in S.R.No.37075 of 2021 vide Court order
dated 20.12.2021 in C.R.P.(NPD)No.646 of
2015 and M.P.No.1 of 2015)

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 24.10.2013 in I.A.No.43 of 2013 in A.S.No.11 of 2012 on the file of the Principal District Court, Namakkal.



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For Petitioners : Mr.P.Valliappan

For R2 : Mr.S.Senthil

ORDER

(The matter is heard through “Video-conferencing”)

Civil Revision Petition is filed against the fair and decretal order dated 24.10.2013 in I.A.No.43 of 2013 in A.S.No.11 of 2012 on the file of the Principal District Court, Namakkal.

2.The petitioners are defendants in O.S.No.171 of 2010 on the file of the Sub Court, Namakkal and appellants in A.S.No.11 of 2012 on the file of the Principal District Court, Namakkal. The respondents filed the said suit against the petitioners for partition. After ful-fledged trial, preliminary decree was passed by the judgment and decree dated 20.10.2011 granting 1/8th share to the 1st respondent and 5/8th share to the 2nd respondent. Challenging the said preliminary decree, the petitioners filed A.S.No.11 of 2012. The said appeal was dismissed for default on 11.10.2012. The petitioners filed present I.A.No.43 of 2013 under



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Section 5 of Limitation Act to condone the delay of 234 days in filing the petition to re-admit the appeal, which was dismissed for default on 11.10.2012.

3. According to the petitioners, when the appeal was posted for arguments on 11.10.2012, the 1st petitioner fell ill due to viral fever, unable to move and confined to bed. The 1st petitioner was under treatment, hence he could not meet the Advocate and give instructions to argue the appeal. Due to old age, he could not withstand the disease and he recovered from illness only couple of a week before filing present application. After that he met the counsel and came to know that the appeal was dismissed for default on 11.10.2012. According to the petitioners, the 1st petitioner was looking after the appeal and therefore, the 2nd petitioner did not give any instructions to the Advocate for arguing the appeal. The petitioners have no intention to drag on the proceedings and failure to appear before the Court on 11.10.2012 is due to the reasons stated above and prayed for condonation of delay in filing the petition to restore the appeal.



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4.The 2nd respondent filed counter affidavit and denied all the averments made in the application and stated that the reasons given by the petitioners are not correct, only to drag on the proceedings, the present application is filed and prayed for dismissal of the said application.

5.The learned Judge considering the averments made in the affidavit and counter affidavit, dismissed the application holding that the reasons given by the petitioners are not sufficient for condoning the delay.

6.Against the said order of dismissal dated 24.10.2013 made in I.A.No.43 of 2013 in A.S.No.11 of 2012 on the file of the Principal District Court, Namakkal, the petitioners have come out with the present Civil Revision Petition.

7.The learned counsel appearing for the petitioners contended that the learned Judge failed to see that the petitioners have given sufficient reasons for condoning the delay. The delay in filing the petition is only



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234 days, while the learned Judge has stated that delay is 1957 days. This shows non-application mind of the learned Judge. The petitioners will not gain anything by allowing their appeal to be dismissed for default. The petitioners have good case on merits and they must be given an opportunity to put forth their case on merits and prayed for allowing the C.R.P.

8. Pending Civil Revision Petition, the 1st respondent died. The learned counsel for the petitioners filed a memo dated 15.12.2021 stating that 2nd respondent is the only legal heir of the 1st respondent.

9. The learned counsel appearing for the 2nd respondent contended that the petitioners have not given any details with regard to illness of the 1st petitioner as to when he became ill and when he recovered from illness. The 1st petitioner was aged only 56 years at the time of filing of application and reasons given by the petitioners that due to old age, he was bedridden and could not move, are invented for the purpose of filing



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application. The learned Judge considered the entire materials and dismissed the application holding that reasons given by the petitioners are not sufficient to condone the delay. There is no reason to interfere with the order of the learned Judge and prayed for dismissal of the Civil Revision Petition.

10.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

11.From the materials on record, it is seen that the petitioners have come up with present Civil Revision Petition challenging the order dismissing their application filed to condone the delay of 234 days in filing petition to restore A.S.No.11 of 2012, which was dismissed for default on 11.10.2012. According to the petitioners, 1st petitioner was looking after the appeal, he fell ill due to viral fever, was bed ridden and due to old age, he could not recover from illness. After recovering from



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illness, he met Advocate and came to know about the dismissal of appeal and filed present application. It is seen from the affidavit filed in support of the present application that the petitioners have not given any particulars as to when 1st petitioner fell ill and when he recovered. The appeal was dismissed for default on 11.10.2012 and the application was filed on 02.07.2013. In view of lack of particulars with regard to illness, the reason given by the petitioners with regard to delay is not sufficient, valid and acceptable.

12.It is well settled that number of days is not a criteria, but the reason given by the parties must be valid, sufficient and acceptable. The intention of the parties must be bonafide and should not be malafide and cause hardship to other parties. The learned Judge considering the entire materials on record and the judgment reported in **(2009) 5 MLJ 276 (State Bank of Mysore, Chennai Main Branch, Chennai vs. Syarikat Pengerak Penang)**, dismissed the application holding that petitioners have not given sufficient reason for condoning the delay and the intention



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of the petitioners is only to drag on the proceedings and application is vexatious. The contention of the learned counsel appearing for the petitioners that the delay in filing petition is only 234 days, but the learned Judge erroneously mentioned the delay is 1957 days, which amounts to non-application of mind, is not acceptable. The learned Judge has considered entire materials placed before her in proper perspective and by elaborate well considered order, dismissed the application. There is no reason to interfere with the said order of the learned Judge.

13.For the above reasons, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

03.01.2022

Index : Yes/No
Internet: Yes/No
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V.M.VELUMANI,J.



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To

The Principal District Judge
Namakkal.

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