



C.R.P.No.1679 of 2020
and C.M.P.No.10514 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.1679 of 2020

and

C.M.P.No.10514 of 2020

1.Thangamani

2.Patchyee @ Patchaiyal

... Petitioners

Vs.

Saraswathy

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to against the fair and decreetal orders dated 03.03.2020 passed in I.A.No.2 of 2019 in CFR.No.5324 of 2019 on the file of the Sub Court, Sathyamangalam.

For Petitioners : Mr.R.Thirumoorthy

For Respondent : Ms.R.Anila
for Mr.K.Moorthy



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ORDER

The revision petition is filed challenging the fair and decreetal orders dated 03.03.2020 passed in I.A.No.2 of 2019 in CFR.No.5324 of 2019 on the file of the Sub Court, Sathyamangalam.

2.The revision petitioners are the respondents in I.A.No.2 of 2019 in CFR.No.5324 of 2019 on the file of the Sub Court, Sathyamangalam. The revision petitioners / respondents filed the petition under Order XLI Rule 3(A) and Section 151 of the Code of Civil Procedure to condone the delay of 454 days in filing the appeal. The respondent/appellant had specifically contended in her application that since she was suffering from jaundice and was taking treatment in Kerala, she could not file an appeal against the decree and judgment passed in O.S.No.220 of 2017 on the file of District Munsif Court, Sathyamangalam, within the time prescribed under law. The said suit was filed by her for declaration of her title to the suit property and for recovery of possession and it was dismissed by the learned District



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Munsif, Sathymanagalam, vide his decree and judgment dated 20.02.2018.

3.The revision petitioners/respondents in the petition in I.A.No.2 of 2019 filed a detailed counter and after full contest, the learned Subordinate Judge, Sathyamangalam, vide his orders dated 03.03.2020, allowed the application in I.A.No.2 of 2019 on payment of costs of Rs.5,000/- to the respondent. Aggrieved over the same, the present Civil Revision Petition is filed.

4.Heard Mr.R.Thirumoorthy, learned counsel appearing for the revision petitioners and Ms.R.Anila, learned counsel appearing for the respondent.

5.Mr.R.Thirumoorthy, learned counsel appearing for the revision petitioners contended that the trial Court allowed the application on the ground that though the delay is inordinate the same can be condoned subject to payment of heavy costs. It was also observed in the



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orders that it is settled law that liberal approach should be adopted while condoning the delay in filing the appeal. He relied on the decision of this Court in *Subramaniam Vs K.Veerakumar* in *CRP.(NPD).No.1132 of 2010* and contended that the law of limitation is founded on public policy and not meant to destroy rights of parties, but to see that the parties do not resort to dilatory tactics. He would further contend that the liberal approach in considering an application under the Limitation Act should not override the substantial law of limitation and no premium can be given for lethargic attitude or utter negligence. He also relied on the decision in *Arukkani Ammal Vs. Guruswamy* reported in [*The Law Weekly Vol.100 (1987) 707*] wherein it has been held that if the allegations in the petition are vague the delay cannot be condoned. It is further contended by him though the respondent/petitioner in the lower appellate Court had taken a stand that she was taking treatment for jaundice in Kerala, she did not adduce any acceptable evidence and therefore in the circumstances, liberal approach should not be adopted.



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6.Per contra Ms.R.Anila, learned counsel appearing for the respondent contended that the averments in the petition cannot be said to be vague as contended by the learned counsel for the revision petitioners. The respondent was actually taking treatment for jaundice in Kerala and that the trial Court had rightly allowed the application on payment of heavy costs of Rs.5,000/- and in the circumstances, the present petition is liable to be dismissed.

7.At the outset, it may be observed that the petitioner in I.A.No.2 of 2019 (respondent herein) had categorically contended that she was taking treatment for jaundice in Kerala continuously and therefore, she could not file an appeal on time before the first Appellate Court. It is true that she did not adduce any documentary evidence to substantiate her contention in this regard. However, the trial Court exercised its discretionary jurisdiction by allowing the application on payment of costs of Rs.5,000/- for condoning delay of 454 days in filing the appeal. It is to be pointed out that the suit was filed by the respondent for declaration of her title and for recovery of possession and the same was dismissed on merits and therefore she must be given an opportunity



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8. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed. However, the learned lower appellate Court judge is directed to dispose of the appeal as expeditiously as possible.

07.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

R. HEMALATHA, J.



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mtl

To

- 1.The Sub Court, Sathyamangalam.
- 2.The Section Officer, VR Section, High Court, Madras.

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