



C.R.P.No.3087 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3087 of 2022

Kadharbasha

.. Petitioner

Vs.

Mohan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the impugned fair and decretal order dated 07.01.2022 passed by the learned Principal Subordinate Judge, Dharmapuri, in I.A.No.45 of 2018 in unnumbered A.S.No. of 2018, allow the said I.A. filed by the petitioner.

For Petitioner : M/s.Arun Anbumani

For Respondent : No Appearance

O R D E R

This Civil Revision Petition has been filed challenging the order passed by the Court below refusing to condone the delay of 4011 days in filing the appeal.



C.R.P.No.3087 of 2022

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2. The respondent herein obtained decree for specific performance dated 16.03.2007. The petitioner/defendant filed an appeal challenging the decree dated 16.03.2007 on 09.04.2018. Along with appeal, he filed a condone delay petition seeking to condone the delay of 4011 days in I.A.No.45 of 2018. In support of the petition to condone the delay, he filed an affidavit wherein he had stated that immediately after delivery of judgment, he had instructed his counsel to apply for certified copy of the judgment and decree. Thereafter due to compelling circumstances in his family, the dispute in the family regarding partition, his case got affected and consequently, he failed to follow up the case. He further averred in the year 2016, his health improved and when he enquired about the status of his case, he came to understand that his advocate passed away and thereafter he filed a fresh copy application in year 2018 and filed this appeal on 09.04.2018.

3. The petitioner herein examined himself and his maternal uncle as D.W.1 and D.W.2 respectively in support of his case. The witnesses examined on behalf of petitioner tried to improve the case by deposing that the petitioner was affected mentally, as well as economically and hence he failed to follow up



C.R.P.No.3087 of 2022

the case for nearly 11 years. It is settled law that any amount of evidence without pleadings is not permissible. The revision petitioner who instructed his counsel to apply for the certified copy of the judgement and decree in the year 2007 itself, failed to contact his counsel and failed to follow up the case for 11 year and he has come out of slumber and has taken steps to file an appeal only in the year 2018. There is supine indifference on the part of the petitioner in not following up the case. The Court below on consideration of the averments found in the condone delay petition and also the other records, rightly came to the conclusion that the enormous delay of 4011 day in filing the first appeal cannot be condoned.

4. The learned counsel for the petitioner tried to make submission on the merits of the case. This Court while considering the application to condone delay in the first appeal, cannot decide the correctness and otherwise of the decree challenged in an appeal especially when the appeal is filed after 11 years, unless the petitioner gives satisfactory explanation to condone the delay of 4011 days in filing the appeal, he is not entitled to canvas other points, more particularly, on the merits of the case.



C.R.P.No.3087 of 2022

5. It is well settled that the application for condoning the delay must be considered liberally and length of delay is not a criteria. The Court must see whether the parties have given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits. In the present case, the reason given by the petitioner is not valid and sufficient to condone the delay of 4011 days. In view of the same, I am not inclined to condone the delay. Accordingly, this Civil Revision Petition is dismissed. No costs.

28.09.2022

Index: Yes/ No
Speaking Order / Non-Speaking Order
jai

To

1. The Principal Subordinate Judge,
Dharmapuri.



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C.R.P.No.3087 of 2022

S.SOUNTHAR, J.

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C.R.P.No.3087 of 2022

28.09.2022