



C.R.P(PD)No.2960 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

**C.R.P(PD)Nos.2960 of 2021**

**and**

**C.M.P.No.21185 of 2021**

R.Devi

..Petitioner

Vs.

G.Ramalingam (Died)

Rep. By is L.Rs.,

Parandhamaniyammal

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of CPC., against the order of the Sub-Court, Palacode, Dharmapuri District in IA.No.560 of 2019 in OS.No.161 of 2017 dated 29.01.2021.

For Petitioner : Ms.S.Sathiya

### **ORDER**

This revision is against an order, condoning the delay of 367 days in filing an application seeking restoration of the suit in OS.No.161 of 2017 that was dismissed for default on 13.06.2018.



C.R.P(PD)No.2960 of 2021

2.The suit in OS.No.161 of 2017 was filed by the son of the respondent, seeking declaration of his title to the suit property. It appears that the son of the respondent one Ramalingam had executed a settlement deed in respect of the suit properties in favour of the petitioner herein on 14.07.2004 and has chosen to cancel the same on 16.07.2004. The petitioner has also filed a suit, seeking declaration that the unilateral cancellation is bad and the same is said to be pending.

3.In the mean time, the plaintiff in OS.No.161 of 2017 namely, the husband of the petitioner and the son of the respondent herein fell ill and died on 07.01.2019. The mother of the plaintiff in OS.No.161 of 2017 / respondent herein came up with an instant application seeking condonation of delay of 367 days in filing an application to restore the suit. This was resisted by the petitioner contending that the suit was dismissed even during the life time of the original plaintiff, and hence the restoration by the legal representative is not permissible. It was also contended that the respondent herein, has not assigned any reason, which would constitute sufficient cause for condonation of delay.



C.R.P(PD)No.2960 of 2021

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4.The Trial Court, upon consideration of the explanation offered by the respondent for the delay concluded that the respondent has made out a sufficient cause for condonation of delay. The very fact that the son of the respondent fell ill and died during pendency of the suit would be a reason for condoning the delay, according to the Trial Court.

5.Ms.S.Sathiya, learned counsel appearing for the petitioner would vehemently contend that the Trial Court was not right in condoning the delay in the absence of a sufficient cause. She would also contend that unilateral cancellation of the settlement deed being invalid, the very suit is not maintainable.

6.As regards the second contention, the same cannot be gone into at this stage. It has to be decided in the suit, upon evidence. The petitioner has also filed a suit seeking declaration that the cancellation is invalid and the same is said to be pending. Therefore, no prejudice would be caused to the petitioner by the order of the Trial Court by condoning the delay.



C.R.P(PD)No.2960 of 2021

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7. After all, the Trial Court has exercised its discretion to condone the delay and I do not think, such exercise of discretion can be interfered with under Section 115 of CPC. This civil revision petition therefore, fails and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**04.01.2022**

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Index: No  
Internet: Yes  
Speaking

To-

The Sub-Court,  
Palacode,  
Dharmapuri District.



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C.R.P(PD)No.2960 of 2021

**R.SUBRAMANIAN, J.**

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**04.01.2022**