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C.R.P. No.1270 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P. No.1270 of 2020
and C.M.P.No.6905 of 2020

1.Shanmugam
2.Vijayalakshmi

.. Petitioners

vs.

Lakshmiammal (Died)
1.R.Mohanasundaram
2.Suganthi
3.S.Premalatha
4.S.Sangeetha
5.M.Sasipriya
6.M.Kalaimathi

.. Respondents

Petition filed under Section 115 of Civil Procedure Code, praying to set aside the Fair and Final Order dated 05.02.2020 in I.A.No.365 of 2015 in O.S.No.51 of 2012 on the file of the Principal Subordinate Judge, Erode.

For Petitioners	:	Mr.C.Ramaraj
For Respondents	:	
(R1 to R5)	:	Mr.B.Pachayappan
(R6)	:	Mr.C.E.Prathap

ORDER

The Civil Revision Petition arises against the order passed by the learned Principal Subordinate Judge at Erode in dismissing an



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application filed under Section 148 of C.P.C., to condone the delay in representation of the petition to set aside the *exparte* decree.

2. The case of the petitioner is that the 1st defendant expired on 09.03.2013. On 03.04.2013, the plaintiff also expired. After the death of the plaintiff and the first defendant, the family members tried to settle the matters and entered into negotiation. As negotiations failed, the petition to set aside the *exparte* decree was represented. In the meantime, there occurred a delay of 498 days in representing the same.

3. This was countered by the respondents, stating that the petitioners did not appear before the Court, when the suit was posted for trial and the allegation of ill-health on the part of the two petitioners is also vague.

4. Considering the counter affidavit filed in support of the condone delay petition, the learned trial Judge dismissed the application filed to condone the delay in representation.



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5. I heard Mr. C. Ramaraj, learned counsel for the petitioner and Mr. B. Pachaiyappan, learned counsel for the respondents 1 to 5.

6. The suit is one for Partition. The 1st defendant had entered appearance and filed written statement. The defendants 2 and 3 did not file the written statement and were set *ex parte*. Issues were framed. The suit was decreed on 11.02.2013. An application was filed to set aside *ex parte* decree. The said application was returned. Unfortunately, it was not represented in time. It is on record that the final decree application was filed in I.A.No.37 of 2015 and the papers were represented only in the meantime.

7. However, considering the delay is in representation, I do not want to throttle the right of the parties to contest the suit. The delay in representation cannot be placed at the door steps of the petitioners. It has to be placed elsewhere. A party engages a counsel and hopes that the application, which is filed by them would be processed at the earliest. If there has been a delay in representation, it has to be blamed only on their representatives and not on themselves.



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8. In any event, this Court, in the case of **Bhuvaneswari Vs. R.Elumalai**, reported in **[2002 (3) CTC 22]**, has held that delay in representation must be considered liberally.

9. Taking into consideration the matter that the suit is for partition, I am inclined to condone the delay, but with heavy costs. Therefore, on payment of Rs.5,000/- (Rs.2,500/- by each petitioner) as costs to the respondents within a period of two weeks from today, the delay will be condoned. Accordingly, the order dated 05.02.2020 in I.A.No.365 of 2015 in O.S.No.51 of 2012 on the file of the Principal Subordinate Judge, Erode is set aside and the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed.

10. Call this matter 'For Reporting Compliance' after two weeks.

31.07.2023

Index:Yes/No
Neutral Citation:Yes/No
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To:

The Principal Subordinate Judge,
Erode.



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V. LAKSHMINARAYANAN, J.

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