



C.R.P.No.1116 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

|                                       |                                         |
|---------------------------------------|-----------------------------------------|
| Date of Reserving Order<br>07.06.2023 | Date of Pronouncing Order<br>22.12.2023 |
|---------------------------------------|-----------------------------------------|

CORAM

THE HONOURABLE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

**C.R.P.No.1116 of 2021**

Nagappan

... Petitioner

-VS-

1.Subbaiyan  
2.Subbammal  
3.Nanjammal

... Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of the Indian Constitution, pleaded to set aside the fair and decreetal order dated 02.01.2020 in I.A.No.20 of 2019 in Unnumbered A.S in CFR No.10020 of 2017 on the file of the Principal District Judge, Erode.

For Petitioner : Mr.K.Sudhakar for Mr.V.P.K.Gowtham  
For Respondent 1 : Mr.A.V.Arun  
For R2 and R3 : Notice served / No Appearance

\*\*\*\*\*

**ORDER**

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 02.01.2020 in I.A.No.20 of 2019 in Unnumbered A.S in CFR



C.R.P.No.1116 of 2021

No.10020 of 2017 on the file of the Principal District Judge, Erode.

WEB COPY

2. Brief facts which are necessary to decide this petition are as follows:

The Revision Petitioner as the Plaintiff had filed O.S.No.149 of 2013 on the file of the learned Sub Judge, Sathyamangalam, Erode District for the relief of partition against his brother, mother and aunt. After trial the suit was partly decreed in favour of the Plaintiff. Aggrieved by the Judgment and Decree granting decree in part. The Revision Petitioner herein filed an appeal. The appeal memorandum was returned for deficit Court Fees. The Petitioner had paid Court Fees as per the earlier Court Fees and Suit Valuation Act. The appeal memorandum was returned defective based on the amended Court Fees and Suit Valuation Act. The Petitioner had not contacted his counsel due to jaundice. Sometime in 2019, he contacted his counsel regarding the appeal preferred by the Petitioner. The learned counsel had stated that the appeal memorandum was returned defective due to deficit Court Fee. Only after payment of sufficient Court Fee the same will be numbered. Therefore, he had immediately arranged for the Court Fees by this time. There was a delay of 401 days in representing the



C.R.P.No.1116 of 2021

petition for payment of deficit Court Fees. Therefore, the petition preferred by the Petitioner as Appellant in I.A.No.20 of 2019 in Unnumbered A.S in CFR No.10020 of 2017 was dismissed by the learned Principal District Judge, Erode. Aggrieved by the same, the Petitioner as Appellant had approached this Court by filing this Civil Revision Petition under Article 227 of the Constitution of India.

3. The Learned Counsel appearing for the Revision Petitioner submitted that this Revision Petition has been filed by the plaintiff before the Learned Principal District Judge, Erode and had filed a petition I.A.No.20 of 2019 in unnumbered A.S.in C.F.R.No.10020 of 2017 to condone the delay of 401 days in submitting sufficient stamp papers in the Appeal Suit.

3.1. The learned Judge had dismissed the petition by observing as follows :-

*“9. The petitioner has simply averred in his affidavit that the delay is due to jaundice, the treatment and his age. Absolutely no evidence is produced to shw these averments before this Court. From the counter of 1<sup>st</sup> respondent it is understood that already an appeal has been presented and the delay excuse*



*petition has been allowed on 24.11.2017 in I.A.No.59 of 2017 by this Court on payment of costs of Rs.5,000/- by the petitioner's side.*

*10. Further, the petitioner has stated in his affidavit that he met his Advocate only on 09.01.2019 and then only he came to know the fact that the appeal was returned for insufficiency of Court fee stamp papers and immediately he paid the necessary Court fee. But, on perusal of records, the Court fee stamp paper was purchased as early as on 12.10.2018, that is three months prior to the date of knowledge of the petitioner as alleged by him. Hence, it is clear that the petitioner has not approached the Court with clean hands. So, the entire attitude of the petitioner shows that he is interested only in filing delay condonation applications without taking proper steps to take the appeal on file. No sufficient or satisfactory reason is adhered to by the petitioner to condone the delay when it has become the habit for the appellant to keep silent for a long time and then coming forward with such delay condonation petition, I am not inclined to allow the petition and the point is answered accordingly.”*

3.2. The learned counsel for the petitioner invited attention of this Court to the affidavit filed by the petitioner herein and had stated that he was suffering from Jaundice and he could not present the stamp papers in time before the Court.

3.3. The learned Judge had dismissed the petition stating that he had purchased the Court fee stamp papers in the year 2018 and had not stated suffering from Jaundice to approach the Court in time to file a petition to



C.R.P.No.1116 of 2021

condone the delay in submitting sufficient stamp papers in the Appeal Suit.

Therefore, the learned Judge, dismissed the petition.

3.4. The contention of the learned counsel for the petitioner that the petitioner is aged about 65 years. The suit was originally filed for partition. The Trial Court had dismissed the suit for partition. Aggrieved by the same, the plaintiff in O.S.No.149 of 2013 before the Learned Subordinate Judge, Sathyamangalam had approached the learned Principal District Judge, by filing an Appeal. Since there was deficit court fee, the Appeal Memorandum was returned. For representing the Memorandum, the Petitioner filed a petition under Section 151 of Cr.P.C. in I.A.No.20 of 2019 in unnumbered A.S. in C.F.R.No.10020 of 2017.

3.5. It is the contention of the Learned Counsel for the Petitioner that the Court fee stamp papers are purchased by the counsel and not by the parties. It is observed that the Principal District Judge, erroneously dismissed the petition.



C.R.P.No.1116 of 2021

4. The learned Counsel for the first Respondent Mr.A.V.Arun submitted that the Petitioner had filed an Appeal for partition with deficit Court Fee which was returned for compliance. The learned counsel for the first Respondent submitted that the Petitioner in his affidavit had stated that the appeal memorandum was returned for deficit Court Fee in the month of November 2017. He was unable to come to Court due to jaundice. On 09.01.2019, when he contacted his counsel he came to know that the appeal memorandum was returned for deficit Court Fees. Immediately he had complied the Court Fees and filed the petition for condonation of delay of 401 days. The said fact is not true. The learned Judge had observed that he had purchased the Court Fee Stamp Paper on 12.10.2018 and he claims that he had knowledge of deficit Court Fees only on 09.01.2019 which is not true. Therefore, the learned Judge had rightly dismissed the petition. As having no merits the order of the learned Principal District Judge dismissing the I.A.No.20 of 2019 in Unnumbered A.S in CFR No.10020 of 2017 dated 02.01.2020 does not warrant any interference. The only intention of the Petitioner is to protracting the proceedings and cause harassment of the Respondent. Therefore, the petition is no merits this petition is dismissed.



WEB COPY



C.R.P.No.1116 of 2021

**Points for Consideration;**

***Whether the order passed by the learned Principal District Judge, Erode dismissing the I.A.No.20 of 2019 in Unnumbered A.S in CFR No.10020 of 2017 dated 02.01.2020 is to be set aside?***

5. Heard Thiru.K.Sudhakar, learned Counsel for the Revision Petitioner and Thiru.A.V.Arun, learned Counsel for 1<sup>st</sup> Respondent. Perused the typed set filed along with the memorandum of Civil Revision Petition.

6. On considering the rival submission and on perusal of the Order in I.A.No.20 of 2019 in Unnumbered A.S in CFR No.10020 of 2017. The order of the learned Principal District Judge is found reasonable. At the same time, if the appeal is not entertained the valuable right of the Plaintiff in the suit in O.S.No.149 of 2013 as Appellant in the Unnumbered appeal will be prevented from being agitated. Therefore, for complete adjudication of the dispute and also the rights involved, it is in the interest of the parties to the dispute that the petition is to be condoned imposing cost on the



C.R.P.No.1116 of 2021

Petitioner for the delay of 401 days in filing deficit Court Fees.

WEB COPY

7. As rightly pointed out by the learned counsel for the Petitioner Court Fees are purchased by the counsel or the Advocate Clerks. Therefore, the date of the Court Fees mentioned by the learned Principal District Judge to reject the condonation of the Petitioner for the delay of 401 days not acceptable to the learned Principal District Judge is found to be misconceived. Considering the valuable right of the Plaintiff to agitate his right in appeal and the appeal memorandum having been returned for deficit Court Fees based on the amendment to the Court Fees and Suit Valuation Act. The Petitioner having complied the defects by paying deficit Court Fees cannot be denied his valuable right of Appeal. Anyhow for the undue delay of 401 days the Petitioner has to be imposed with heavy cost. **In the interest of justice, the Civil Revision Petition is to be allowed.** Therefore, the order passed by the learned Principal District Judge rejecting the reasons offered by the Petitioner as Appellant for the delay of 401 days on the ground that he had already purchased stamp paper is set aside on payment of heavy cost.



C.R.P.No.1116 of 2021

In the light of the above discussion, **this Civil Revision Petition is**

**allowed.**

In the interest of justice, the Petition is allowed on cost of Rs.2,000/- (Rupees Two Thousand Only) to be paid by the Petitioner to the Respondents within a period of one month from the date of receipt of a copy of this order or from the date of uploading of this order on the website of this Court.

On such payment, the Appeal memorandum is to be taken on file pending before the learned Principal District Judge, Erode, and the Appeal shall be heard on merits and disposed of as per law.

**22.12.2023**

rna/cda

Index : Yes / No

Internet : Yes / No

**To**

9/11



C.R.P.No.1116 of 2021

The Principal District Judge, Erode.

WEB COPY

**SATHI KUMAR SUKUMARA KURUP., J.**

rna/cda

**Order in**

**C.R.P.No.1116 of 2021**



WEB COPY



C.R.P.No.1116 of 2021

**22.12.2023**