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C.R.P.No.2637 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2023

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.2637 of 2021
and
C.M.P.No.19542 of 2021

N.Ramalinga Udaiyar (died)

R.Thangammal (died)

1. G.Arulmozhi

2. G.Kanimozhi

3. G.Rajavel

[cause title accepted vide Court order dated 29.10.2021 made
in C.M.P.No.17769 of 2021 in C.R.P.SR.No.87176 of 2021]

Petitioners

Versus

1. K.Suganthi

2. Sivasankari

3. Minor Sivaranjani

Rep.by her mother 1st Respondent Suganthi

.. Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order on the file of the Subordinate Court, Kallakurichi in I.A.No.148 of 2018 in O.S.No.185 of 2009 and allow the Civil Revision Petition.



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For Petitioner : Mr.C.Mahendran for
Ms.Dakshayani Reddy

For Respondents : Mr.T.Dhanasekaran and
Mr.R.Agilesh (for R1 to R3)

ORDER

This Civil Revision Petition has been filed challenging the order dated 18.07.2019 in I.A.No.148 of 2018 in O.S.No.185 of 2009 on the file of the Subordinate Court, Kallakurichi.

2. The said I.A is filed by the petitioner/defendants to set aside the ex-parte decree passed against them on 23.12.2014.

3. It is the case of the petitioners/defendants that the third defendant suffered Jaundice and was bedridden, due to which he could not move for several months and could not even contact their counsel. Now, the defendants have received notice from the plaintiffs, who have filed final decree application. Hence, the defendants prayed that the delay may be condoned.



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4. The learned counsel for the plaintiffs/respondents submitted that the Court below had given sufficient opportunities to the defendants for filing written statement, which they did not do and hence, the suit was decreed ex-parte. It is further stated that with regard to the C-schedule property is concerned, one Valliyamamai filed a suit in O.S.No.839 of 2005 before the District Munsif Court, Kallakurichi and in that suit, in the execution stage, the second defendant (since deceased) appeared through her advocate. It is duty cast upon the defendants to mention the reasons for every day's delay. The defendants have not approached this Court with clean hands and hence such delay is willful and need not be condoned.

5. It is seen that the suit has been filed for partition and separate possession and the suit was decreed ex-parte and preliminary decree was passed on 23.12.2014, but, subsequent to which, final decree application has been filed in I.A.No.264 of 2017 which is pending for enquiry. It is the case of the defendants that the third defendant suffered Jaundice, due to which they could even contact their counsel. Now, the defendants have received notice subsequent to the filing of final decree application and the defendants knew that the original suit was decreed ex-parte on



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23.11.2014.

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6. Thus, it is clear that the third defendant suffered illness and that, the Court below dismissed the application on the ground that there are no documents to support the illness and that the respondents/plaintiffs would contend that the the second defendant (since deceased) appeared and conducted the suit in O.S.No.839 of 2005 in E.A.No.17 of 2016 and the third to fifth defendants/petitioners are conducted claim petition in O.S.No.218 of 2004. In this aspect, the petitioners/defendants have not denied and they are not ready to adduce evidence to prove their stand and the reason for delay has not been explained properly, that too, day-to-day's delay. The petitioners/defendants are only trying to drag on the proceedings as contended by the respondent/plaintiffs and that they are convinced that there is no merit in the application and the reason for the delay is not bona-fide. Hence, the Court below dismissed the application filed to condone the delay in filing the petition to set aside the ex-parte decree passed in favour of the plaintiffs.

7. At this juncture, it is worthwhile to notice a decision of the Supreme Court of India reported in 1998 (7) SCC 123 (**N.Balakrishnan**



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Vs. M.Krishnamurthy) dealing with the condonation of delay, and the relevant portion of the said decision of the Hon'ble Apex Court is extracted hereunder:-

“9. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory....”

8. From the above decision of the Hon'ble Supreme Court of India, it is clear that each and every day's delay must be explained by the concerned party to the fullest satisfaction of the Court, even though the delay may be huge or less number of days delay, the party seeking to condone the delay must explain each and every day's delay to the



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satisfaction of the Court.

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9. In the case on hand, the defendants have not explained the delay to the satisfaction Court. However, in order to give an opportunity for the defendants to defend their case, this Court allows the present Civil Revision Petition on payment of costs. Accordingly, this Civil Revision Petition is allowed, with costs of Rs.10,000/- to be paid by the petitioners/defendants to the respondents/plaintiffs on or before 31.01.2023 and report of compliance before this Court on 01.02.2023.

10. It is made clear that in so far as the final decree application filed by the plaintiffs is concerned in I.A.No.264 of 2017 which is stated to be pending for enquiry, this Court makes it clear that the Court below shall dispose of I.A.No.264 of 2017 as early as possible, at any rate, not later than six months from the date of receipt of a copy of this order.

Consequently, C.M.P. is closed.

12.01.2023

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Index: Yes/No

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Speaking order/Non-speaking order
Neutral Citation: Yes/No

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To

1. The Subordinate Judge, Kallakurichi
2. The Section Officer,
V.R. Section,
High Court, Madras.



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V.BHAVANI SUBBAROYAN,J.

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