



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2023

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CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.2375 of 2019
and C.M.P.No.15464 of 2019

R.Dhatchayani

.. Petitioner

Vs.

1. D.Selvam
(Represented by his power of attorney
Agent S.Deenathayalan)

2.S.Meena (died)
3.S.Dhakshinamurthy
4.S.Deenathayalan

... Respondents

(The 2nd respondent died and as per the order of this
Court dated 07.07.2023 in memo USR.No.21328 of 2023,
the respondents 3 and 4 were recognised as legal
heirs of the deceased 2nd respondent)

Prayer: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 08.04.2019 made in I.A.No.472 of 2017 on the file of the Sub Court, Poonamallee, filed under Section 5 of the Limitation Act to condone the delay of 597 days in filing the petition to set aside the exparte decree dated 12.09.2015 made in O.S.No.276 of 2014.



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For Petitioner : Mr.G.L.Ramshankar

For Respondents : Mr.S.Vasudevan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 08.04.2019 made in I.A.No.472 of 2017 in O.S.No.276 of 2014 on the file of the Sub Court, Poonamallee.

2. The present suit seeks for relief of declaration of title and for recovery of 'B' schedule mentioned property and for permanent injunction of 'C' schedule mentioned property. In the said suit, the Civil Revision Petitioner is the sole defendant and the respondents herein are the plaintiffs. She had engaged an Advocate to contest the suit. But the counsel did not represent the case and therefore, the matter was taken up exparte and an exparte decree was passed by the learned trial Judge on 12.09.2015.

3. It was only after the notice in E.P. was served, the petitioner came to know of the exparte decree and therefore, she filed an application to set aside the exparte decree along with an application to condone the delay. By the time she filed an application on 31.05.2017, the 30 day period to file the application has been gone by which resulted in 596 days delay.

4. The application in I.A.No.472 of 2017 filed to condone the delay was

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dismissed by the trial Court holding that sufficient cause had not been shown and also on the fact that the written statement had not been filed by the defendant. Against which, the present revision has been presented.

5. It is not in dispute that the petitioner had engaged one Mr.Mohan, Advocate to defend her in the suit. The role of a party in filing written statement is very limited. Atleast in this part of the country, the written statement is drafted by the lawyer and signature has been taken from the party. One cannot expect a litigant to draft a written statement and give it to the lawyer. She has done everything that she could within her powers by engaging a lawyer and giving him a vakalat, with a request to contest the suit. Unfortunately, he has not done so, which has resulted in the present situation.

6. As vital property rights are involved, I feel a straight jacket formula that the party has not explained every day's delay need not be adopted here. I find the “cause”, of the lawyer not having informed about the stage of the case before the Court as “sufficient cause”. I do not want to punish the client for the mistake of the lawyer. Therefore, in order to give an opportunity to the petitioner, the delay of 596 days can be condoned.

7. I cannot be blind to the fact that the plaintiff had obtained decree in the year



2015 and has been litigating this matter for more than eight years thereafter.

Therefore, I have to balance the interest of the petitioner as well as the respondents and the delay is condoned on the following conditions:

(i) Learned counsel for the petitioner shall pay to the learned counsel for the respondent a sum of Rs.10,000/- (Rupees Ten thousand only) as a condition precedent for condonation of the delay.

(ii) The said payment shall be made on or before 21.07.2023.

(iii) Apart from this, the defendant shall file her written statement on or before 31.07.2023.

(iv) The learned trial Judge is directed to number the application under Order IX Rule 13 of C.P.C. and allow the same.

(v) He shall frame issues and take up the matter for trial at an earliest and in any event, dispose of the suit within a period of nine months from today, i.e. the suit shall be disposed of on or before 30.04.2024.

8. It is represented by Mr.S.Vasudevan, learned counsel for the respondents that Mrs.S.Meena, the 2nd respondent passed away on 14.05.2023. The legal heirs of Mrs.S.Meena are already on record as the respondents 3 and 4. The memo in USR.No.21328 of 2023 dated 05.07.2023 has been filed to record the fact that the legal representatives of the deceased Mrs.S.Meena are already on record. The said



memo is recorded.

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9. Office is directed to carry out the amendment. The legal representatives' status having been recorded by this Court shall enure in the suit also. The trial Court need not insist on a separate application to be filed to bring on record the legal representatives of the deceased 2nd plaintiff/2nd respondent, in the suit.

10. With the above directions, the C.R.P. is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

07.07.2023

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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Note:Issue order copy on 10.07.2023

To

The Subordinate Judge
Poonamallee.

V.LAKSHMINARAYANAN,J.



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