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C.R.P.(NPD)No.2579 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.2579 of 2019 and
C.M.P.No.16967 of 2019

1. Paramasivam
2. Vellakannu (died)
3. Subbathal
4. Muthukumar
5. Sivakumar
6. Veerammal
7. Konammal
(2nd petitioner viz., Vellakannu died and
her legal heirs brought on record as
respondents 3 to 7 vide order of this Court
dated 03.08.2023 made in C.M.P.Nos.3143,
3602 & 3605 of 2023 in C.R.P.No.2579
of 2019)

... Petitioners

Vs.

1. Karunambigai (died)
2. Premavathi (died)

3. Gnanasownthari
4. Ravikumar

5. Rangaraj
6. Kavitha
7. Karuppusamy

... Respondents



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(1st respondent viz., Karunambigai died and her legal heirs brought on record as respondents 3 & 4 vide order of this Court dated 24.08.2023 made in C.M.P.Nos.2246, 2249 & 2251 of 2023 in C.R.P.No.2579 of 2019 and C.M.P.No.16967 of 2019)

(2nd respondent viz., Premavathi died and her legal heirs brought on record as respondents 5 to 7 vide order of this Court dated 24.08.2023 made in C.M.P.Nos.2366, 2369 & 2370 of 2023 in C.R.P.No.2579 of 2019 and C.M.P.No.16967 of 2019)

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and decretal order passed in I.A.No.7 of 2018 in A.S.No.32 of 2009 on the file of the Sub-Court, Udumalpet, dated 27.03.2019.

For Petitioners : Mr.B.Gopalakrishnan

For Respondents : Mr.Gowri Shankar
for R.Sreedhar

ORDER

This revision arises against an order passed in I.A.No.7 of 2018 in A.S.No.32 of 2009, dated 27.03.2019.

2. A.S.No.32 of 2009 is an appeal arising out of O.S.No.246 of



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2003. O.S.No.246 of 2003 is a suit for partition filed by the respondents against the petitioners. The said suit was decreed on 22.06.2009. As pointed out earlier, against the decree, an appeal was preferred in A.S.No.32 of 2009, which was dismissed for default on 27.09.2013.

3. To restore the appeal, which had been dismissed for default, I.A.No.7 of 2018 was filed together with a petition for condonation of delay of 1506 days. The said application was dismissed by the learned lower Appellate Judge stating that there has been no reasons given by the petitioners to have the delay condoned. Aggrieved by the same, the present revision has been preferred.

4. I have heard both sides and carefully perused the entire records.

5. The grounds for which the petitioners wanted the delay to be condoned, are on two fold:



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(i) On the date on which the case was listed, a relative of the petitioners had passed away and therefore, the petitioners were not in a position to attend the Court. They would further allege that in order to complete the funeral obsequies, they had to go over and stay in the residence of the deceased relative.

(ii) The second reason they had given is that on their return, they went to the Advocate's Office, but unfortunately, the Advocate had moved out of the town.

6. I am not convinced with the second reason. In the days of mobile technology, it does not require somebody to go in person and contact the Advocate, when it is easily accessed over the call. Nonetheless, the first reason seems to be acceptable. Death is a reason why a party could not have approached the Court and therefore, I find sufficient cause. Another reason I am able to see in the First Appeal is, it is not necessary for a party to be present in Court and it is the duty of the lawyer to advance the arguments irrespective of the presence of the



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parties. For the default of the lawyer, I feel that the petitioners need not be punished.

7. Learned counsel for the petitioners would state that the final decree proceeding was also dismissed for default on 27.03.2019.

8. Therefore, in the light of the above circumstances, I am of the opinion, an opportunity can be granted to the petitioners to contest the appeal. However, taking into consideration the hardship that has been caused to the respondents 1 & 2/the plaintiffs, I am inclined to impose heavy costs and pass the following order:

(i) The delay is condoned on condition that the petitioners pay Rs.50,000/- each to the plaintiffs/respondents 1 & 2 i.e., Rs.1,00,000/- in total.

(ii) On the payment of costs, the learned Subordinate Judge, Udumalpet, is requested to take up an application filed to restore the appeal, allow the same and thereafter, hear the appeal on merits and



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dispose of the same on or before 28.02.2024.

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(iii) It is made clear that if the cost amount is not paid, the Civil Revision Petition will stand dismissed.

9. The Civil Revision Petition stands allowed on the above terms.

No costs. Consequently, connected Miscellaneous Petition is closed.

24.08.2023

(2/2)

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

The Subordinate Judge, Udumalpet.

V.LAKSHMINARAYANAN,J.

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