



CRP No.3386 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

CORAM:

THE HONOURABLE Mr. JUSTICE LAKSHMI NARAYANAN

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Rahman Sheriff

...Petitioner

Vs

1.S.M.Anwar @ Janab Abdul Wahab
@Mohammed Anwar Syed

2.Siddharaju

3.H.Shaheen

4.H.Sartaj

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order dated 03.09.2019 made in I.A.No.70 of 2018 in O.S.No.NIL of 2014 on the file of Principal District Court, Krishnagiri.

For Petitioner : Mr.Sri Ram
for Mr.P.Duraiswamy

For Respondents : No appearance



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ORDER

The Civil Revision Petition arises against an order, dismissing the application, filed to condone the delay in representation of an unnumbered suit.

2. The plaintiff is the revision petitioner. He had presented a suit for several reliefs such as partition, appointment of advocate commissioner and declaration regarding sale deed etc., According to the plaintiff, the plaint was returned on 24.11.2014. It ought to have been represented on or before 24.12.2014. Due to misplacing of the bundle in the office of the counsel, it could not be represented in time. By the time it was represented, a delay of 1153 days had occasioned.

3. The application in support of condonation of delay in representation has been sworn to by the learned counsel for the plaintiff. He has specifically stated that he could not represent in time because he had misplaced the bundle.



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4. The learned trial Judge has received a counter from the respondents. They stated that it was the advocate who filed an affidavit and therefore, the delay must not be condoned. The learned Judge had recorded the evidence of the plaintiff. He had stated that due to his illness, he suffered from speech problem and that he had entrusted the case to his cousin. He added, his lawyer was being followed by his cousin. The learned Judge came to the conclusion that this is not sufficient cause for the purpose of condonation of delay and dismissed the petition.

5. This Court on 17.10.2019 had ordered notice of motion, returnable in two weeks. The respondents have been served, but till date no appearance has been entered into.

6. Mr.Sriram, learned counsel representing Mr.P.M.Duraiswamy would state that the first defendant is no more and therefore, the Court can exercise the power under Order 22 Rule 4 of Civil Procedure Code



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and dispense with the notice of the first defendant as the first defendant remained *exparte* before the Court below.

7. I am inclined to accept the submission. Exercising the power under Order 22 Rule 4 of Civil Procedure Code, I am dispensing with the necessity of substituting the legal representative of the first defendant as the first defendant/first respondent had remained *exparte* in the court below.

8. Here is a case which relates to condone delay in representing a suit for partition. The cause of action for partition arises day-to-day and in fact even without condonation of delay, the plaintiff could have filed a fresh suit for partition. With this principle on mind, I intend to exercise my discretion in favour of the plaintiff/petitioner. Apart from that, the condonation of delay in representation is a matter between the Court. This Court has held so in the case of *Y.Cusbar* vs *K.Subbarayan* reported in **1993 TNLJ 375**.



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9. The purpose of representation within a time is to ensure that the parties do not unnecessarily prolong the matter and the case is taken up and numbered at an early date. A client engages an Advocate under the hope that the matter will be taken and disposed of at an early date. Unfortunately, in this case, the plaintiff, who had engaged a lawyer, has become sick and therefore, he had to rely on his relative for numbering the plaint. He has entered the witness box and deposed to that effect. I am convinced by the reasons given by the plaintiff. Apart from that, the Advocate has filed an affidavit taking responsibility for the delay in representation. To state that the advocate cannot file an affidavit is contrary to the position of law laid down by this Court in ***R.M.Bedi vs. Vijayeswari Textiles Ltd. (2007) 2 MLJ 1162***. Here is a case where the advocate who filed an affidavit in support of the delay application seems to be a senior member of the bar.

10. Therefore, considering the overall circumstances, I am of the opinion that the delay of 1153 days can be condoned. The plaintiff is



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V.LAKSHMINARAYANAN,J.,

sr

directed to pay a sum of Rs.5,000/- cost to the defendants 2 and 3 and on proof of production of payment of cost of Rs.5,000/-, the learned trial Judge is directed to number the plaint and take up the suit for disposal.

11. With the above direction, the civil revision petition is allowed.

No costs.

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Index: Yes/No

Speaking order/Non-speaking order

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To

Principal District Court, Krishnagiri

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