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C.M.P.No.8276 of 2023 in
Rev.Appl..Sr.No.147121 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.P.No.8276 of 2023
in
Rev.App.SR.No.147121 of 2022

1.Mrs.V.Indhirani
2.Mr.I.V.Senthilnathan
3.Mrs.K.Sasikala
4.Mr.T.Rajendran (Deceased)
5.Mrs.S.Hemalatha

...Petitioners

Vs.

1.A.Rajaammal
2.N.Maragathanmani
3.S.Gunasundari
4.Punniavathy
5.Selvaraj
6.Ravi
7.Maalathi
8.P.S.Geetha
9.G.R.Dharshini

...Respondents

* * *

Prayer in C.M.P. Miscellaneous Petitions filed under Section 5 of the Limitation Act to condone the delay of 1295 days in filing the Review Petition Sr.No.147121 of 2022 to review the order dated 18.12.2018 in A.S.No.1083 of 2007.



C.M.P.No.8276 of 2023 in
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Prayer in Rev.Appl.: Review petition filed under Section 114 /w Order 47 Rule 1 and Section 151 of Code of Civil Procedure to review its order dated 18.12.2018 in A.S.No.1083 of 2007.

* * *

For Petitioners : Mr.J.Sivanandaraj, Senior Counsel,
for Mr.P.V.Sabaridas

ORDER

This petition has been filed for condoning the delay of 1295 days for filing the Review Petition.

2. The petitioner seeks to review the order dated 18.12.2018 passed by this Court in A.S.No.1083 of 2007 and Cross Objection No.57 of 2009. The said appeal was filed by the petitioners herein who were defendants in the suit. The learned counsel who had entered appearance on behalf of the petitioners herein had on 08.01.2018 reported that despite his attempts to contact his clients, namely, the appellants by



registered post, the appellants herein had not responded to his notice.

Therefore, on 08.01.2018, this Court had directed the Registry to issue a drafted notice to the appellants. The drafted notice had been served on the appellants but however, they had not chosen to appear before the Court or engage some other counsel to contest the case. Therefore, this Court had proceeded to dismiss the appeal filed by the appellants.

3. As regards Cross Objection No.57 of 2009, the judgement was modified taking into account the fact that the Cross Objector/ 7th defendant had purchased a portion from the 1st defendant and as both the 1st defendant and the plaintiffs had also admitted that they had no objections in allotting that shares to D.W.1 the vendor of the 7th defendant and also taking note of the evidence of D.W.1, the vendor of the 7th respondent who had no objection in allotting 63 cents from out of 92 cents to the 2nd and the 3rd defendant.

4. The records would show that pursuant to the order, the petitioners herein had filed C.M.P.No.14842 of 2019 with a delay of 103



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days to restore the suit which was dismissed on 18.12.2018. After hearing the parties, this Court by a detailed order dated 25.03.2022 was pleased to dismiss the application filed by the petitioner for condoning the delay of 103 days in filing the application to restore the appeal. The learned Judge had observed that the suit was filed for partition as early as in the year 2004 and a Preliminary Decree had been passed in the year 2007. The subject matter of the appeal is of the year 2007 and the parties were all related to each other. Therefore, the petition was dismissed. The learned Judge had also observed that the drafted notice had been served on the petitioners/applicants.

5. The very same plea is taken in the instant petition had been taken by the petitioners in the earlier restoration petition. After considering the same, the learned Judge had proceeded to dismiss the petition. After the dismissal of that petition, the petitioners have moved this Court seeking a review, however, the review has been filed with an inordinate delay of so many days. The very same reasons as stated in the restoration application is once again reiterated before this Court.



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6. Heard the learned Senior counsel for the petitioners/appellants.

7. The records would reveal that even prior to this Court ordering the Registry to take a draft notice to the appellants, the learned counsel appearing for the petitioners/ appellants had sent a letter dated 16.11.2017 in which it has been mentioned that despite the attempts of the counsel to contact the petitioners for over a year and that too after engaging the services of a learned Senior counsel as per the instructions of the petitioners, there is no response. Therefore, the learned counsel had stated that he would be withdrawing the vakalat in the next hearing. This letter had been received by the 2nd petitioner, Mr.I.V.Senthilnathan. Apart from the 1st and the 2nd petitioners, there are four other petitioners. Therefore, the petitioners are very much aware about the proceedings in question. The letter had been received in the month of December 2017 and the 1st petitioner had undergone her Angioplasty treatment between 01.11.2017 and 15.11.2017. The 2nd petitioner had received the Advocate's letter on 01.12.2017. The 2nd petitioner had met with a road



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accident and had been hospitalized from 21.01.2018 till 02.03.2018 and a surgery had been done on 25.01.2018. The discharge summary would state as follows:-

"A 44 Years old male presented unconscious facing road accident with C/O pain left ankle and heel, left shoulder dislocation/left rib injury/multiple fracture in left elbow. since fall and he was admitted in our hospital for which closed reduction and cannulated cancellous screw fixation done on 25/01/2018, left shoulder and neck belt fixing, POP banded around left hand elbow, nib injury treatment. Post operatively he received parenteral antibiotics, analgesics, phusiotheraphy and regular wound care. As his improvement was very slow, he was in bed for three months and on request of the patient and his caretaker, he was discharge on 02/03/2018 with discharge advice. Patient to be reviewed on 19/04/2018."

8. Therefore, the petitioners after receiving the intimation of their counsel as early as on 01.12.2017, have not taken any steps to be represented in Court. The application for restoration has also been filed



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with a delay. The Medical Records of the 1st petitioner would show that on the date of the receipt of a letter from the counsel, the 1st petitioner's Angioplasty surgery had been completed and the 2nd petitioner had not sustained any injuries and it was nearly a month and 20 days later that he had suffered the road accident. The letter from the counsel would reveal that they have been trying to contact the petitioners for well over a year i.e. from the year 2016. Therefore, petitioners have shown absolute indifference in prosecuting the case. Further, the review is filed only with reference to the judgement passed in the First Appeal and no application to set aside the judgement passed in the Cross Objection has been filed, therefore, the judgement in the Cross Objection No.57 of 2009 has attained finality.

9. In these circumstances, no useful purpose would be served in condoning the delay and that too nearly after three and a half years. Accordingly, the above C.M.P.No.8276 of 2023 stands dismissed. Consequently, the Review Application is rejected at the S.R. stage itself. No costs.



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10. It is stated that the final decree proceedings are pending before the Additional District and Sessions Judge, Fast Tract Court, No.III, Coimbatore. The learned Judge is directed to dispose of the final decree proceedings at the earliest.

31.07.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation :Yes/No
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To

1.The Additional District and Sessions Judge,
Fast Tract Court, No.III,
Coimbatore.



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P.T.ASHA.J

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