



C.R.P.No.1674 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

C.R.P.No.1674 of 2019

S.Ponnusamy @ Thiruvengadam

... Petitioner

Vs.

1. S.Subramania Reddy

2. Dellibai @ Maniammal

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order in I.A.No.33 of 2017 in A.S.No.67 of 2011 dated 26.06.2018 passed by the Subordinate Court, Arakkonam and thereby allow the above Civil Revision Petition.

For Petitioner : Mr.K.V.Ananthakrushnan

**For Respondent : Mr.C.K.Chandrasekar for
R1 and R2**



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ORDER

The petitioner / appellant in the Appeal has filed this Civil Revision Petition against the fair and decreetal order passed in I.A.No.33 of 2017 in A.S.No.67 of 2011 by the Sub Judge, Arakonam, dated 26.10.2018, dismissing the application filed by the petitioner under Section 5 of the Limitation Act to condone the delay in setting aside the order recording the memo dated 12.09.2012 and to restore the appeal on file.

2. The petitioner was the 2nd defendant in the suit filed by the 1st respondent in OS No. 202 of 2000. The 1st respondent filed the suit against his father and the petitioner, who is his brother seeking for the relief of permanent injunction. The suit was contested and ultimately, through judgment and decree dated 21.11.2005, it was decreed as prayed for.

3. Aggrieved by the same, the petitioner filed an appeal before



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the Sub-Court, Arakonam in AS No.67 of 2011. This appeal was not pressed and withdrawn by filing a memo dated 04.08.2012. Acting upon the memo, the appeal in AS No.67 of 2011 came to be dismissed as not pressed on 12.09.2012.

4. The petitioner filed IA No. 33 of 2017 praying for condoning the delay in filing the petition to set aside the order recording the memo for dismissing the appeal as not pressed and to restore the appeal on file. The Court below after considering the fact that there was an exorbitant delay of 1227 days and that the petitioner did not give any valid reasons to condone the delay in setting aside the order recording the memo, dated 12.09.2012, proceeded to dismiss the application dated 26.06.2018. Aggrieved by the same, the present Civil Revision petition has been filed before this Court.

5. Heard Mr.K.V.Ananthakrushnan, learned counsel for the



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petitioner and Mr.C.K.Chandrasekar, learned counsel for respondents 1
and 2.

6. The petitioner has taken a stand in the affidavit filed in support of the condone delay petition as if he was threatened to withdraw the appeal as not pressed and that he was also suffering from an ailment and hence, he was not able to file the application on time.

7. The Court below on considering the claim made by the petitioner and on appreciation of the evidence tendered by the petitioner and the documents marked, came to a conclusion that the petitioner did not even state as to who threatened him and when and where he was threatened and what steps he took after he was threatened. Since the petitioner only made a bald allegation that he was threatened, the Court rightly rejected the stand taken by the petitioner and disbelieved the story that was projected by the petitioner.



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8. Insofar as the ailment is concerned, the documents that were relied upon by the petitioner were prescriptions that were given by a doctor to cure fever, cold, cough and stomach upset. The Court below therefore rightly came to a conclusion that the petitioner was not suffering from any serious ailment and that the nature of the ailment that was exhibited through these prescriptions, will not take 1227 days to recover and to file an application for restoration of the appeal.

9. The fair and decreetal order passed by the Court below does not suffer from any infirmity or illegality. The Court below has given cogent reasons while dismissing the application. This Court does not find any ground to interfere with the same and in the result, this Civil Revision Petition stands dismissed. No costs.

09.01.2023

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
rka



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N.ANAND VENKATESH., J
rka

To

The Subordinate Court, Arakonam

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