



C.R.P(MD)No.1117 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P.(MD)No.1117 of 2013

Alagu

... Petitioner/Petitioner/2nd Defendant

Vs.

1.Selvamani
2.Lakshmi
3.Manickam
4.Sarasu

... Respondents 1 to 4/Respondents 1 to 4/Plaintiffs 1 to 4

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order in I.A.No.276 of 2012 in O.S.No.97 of 2007 dated 07.03.2013 on the file of the Subordinate Judge, Pudukkottai.

For Petitioner : Mr. N.Balakrishnan

For Respondents : Mr.RMS.Sethuraman



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ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order passed in I.A.No.276 of 2012 in O.S.No.97 of 2007 dated 07.03.2013 on the file of the Subordinate Judge, Pudukkottai.

2. The learned counsel for the petitioner submitted that I.A.No.276 of 2012 in O.S.No.97 of 2007 was filed to condone the delay of more than 528 days in filing the petition to set aside the ex-parte decree that is passed in the suit in O.S.No.97 of 2007. According to the learned counsel, the petitioner was admitted in the hospital for taking treatment for fracture. Moreover, the suit is filed for partition and the parties are close relatives and if one opportunity is given to the petitioner, he could put forth his case before the court. Hence, he prays for setting aside the order of dismissal.

3. The learned counsel for the respondents would submit that the court below has rightly dismissed the petition and there is no need to interfere with the said order.



4. Considered the rival submissions and carefully perused the materials available on record. This Court is of the view that the petitioner may be given an opportunity to defend his case in the suit.

5. I am of the view that refusal to condone delay would result in foreclosing the petitioner from putting forth his case. Since there can be no presumption that delay in filing a condone delay petition is always wanton and deliberate. The Hon'ble Supreme Court of India in **Ram Nath Sao alias Ram Nath Sahu and others Vs. Gobardhan Saq and others** reported in (2002)3 SCC 195 in paragraph Nos.11(13) and 12 has observed as follows:

“11(13). It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. ”



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12. Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party”.

6. Accordingly, the order passed in I.A.No.276 of 2012 in O.S.No.97 of 2007 dated 07.03.2013 on the file of the Subordinate Judge, Pudukkottai, is set aside, by condoning the delay of 528 days delay in filing a petition to set aside the ex-parte decree thereby allowing the said I.A.No.276 of 2012 in O.S.No.97 of 2007. Since the suit is of the year 2007, the trial court shall conclude the trial as expeditiously as possible.

7. In fine, this Civil Revision Petition is allowed. No costs.

24.03.2023

Index : Yes/No

Internet : Yes/No

CM

To,

1. The Subordinate Judge, Pudukkottai.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

CM

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