



C.R.P.NPD(MD)No.873 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :25.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.NPD.(MD).No.873 of 2020

and

C.M.P.(MD).No.5782 of 2020

C.Natarajan

... Petitioner

Vs.

1.S.Kalayarasi

2.C.Nagasundaram

3.N.Senthilnathan

4.K.Nagarajan

5.C.Ramachandran

C.Chinnaiah (died)

6.C.Nagaraj

7.C.Chellam

... Respondents

(No relief sought against the respondents 2 to 7. Hence, notice to the respondents 2 to 7 may be dispensed with)



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PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order dated 11.03.2020 in I.A.No.38 of 2015 in unfilled A.S.No.... of 2019 on the file of the Principal District Judge, Sivagangai and allow this Civil Revision with costs.

For Petitioner :Mr.S.Selva Adithya for
Mr.G.Prabhu Rajadurai

For Respondents :Mr.S.Balaji for R1

:Notice Dispensed with for R2 to R7

ORDER

The petitioner is the defendant in O.S.No.6 of 2007 filed by the first respondent for partition of the suit scheduled property. The trial Court has decreed the suit on 28.07.2017 and the decree was drafted by the Court and later it was modified on 11.02.2013. Thereafter, the petitioner has filed an appeal. It is made clear whether the appeal was filed in time or beyond the time. However, there were returns. The petitioner represented the appeal papers. The Court below has dismissed the application filed by the petitioner for representing the appeal with the following observations:

This petition has been filed seeking



condonation of delay of 1114 days in representing the appeal memorandum. It would be claimed that the appeal along with the petition filed under Section 5 of Limitation Act seeking condonation of delay in filing the appeal was returned by this Court for the purpose of amending the decree and that the petitioner had filed an amendment application before the trial Court. After getting the decree amended, the appeal has been filed and in the process, there is a delay of 1114 days in representing the appeal memorandum. Claiming thus, present petition has been filed.

2.The first respondent has filed a counter statement, in and by which, it would be contended that the reasons stated by the petitioner are false and that final decree application has already been filed and it is pending. It would be further claimed that only in order to drag the proceedings, the present petition has been filed.



3.The point for consideration that arises in the present petition is whether this petition deserves to be allowed?

4.Heard both. Perused the materials on record.

5.A perusal of the certified copy of decree filed by the appellant shows that I.A.No.163 of 2013 filed for amendment of the decree was disposed of on 11.02.2013 itself. However, the appeal has been represented along with the present petition only on 20.03.2015. There is no explanation as to why the appeal was not represented from 11.02.2013 to 20.03.2015. This shows the casual approach of the petitioner in prosecution of his appeal. As such, this Court is of the view that the reasons stated by the petitioner for condonation of delay cannot be accepted and is not sufficient. Therefore, this petition deserves to be dismissed.

In the result, petition is dismissed.



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2. No doubt that the petitioner has been casual by taking the appellate proceedings lightly and by not representing the Appeal Memo corrects the defects pointed by the Court. However, the petitioner appears to have filed appeal in time. This Court should have condoned the delay by putting the petitioner to terms as the petitioner has filed the appeal in time.

3. Considering the above, Court is inclined to interfere with the impugned order of the Court by allowing this Civil Revision Petition, on terms, subject to the petitioner paying a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) to the first respondent/plaintiff as cost within a period of 30 days of this order. Subject to the payment of the aforesaid costs, T.A.No.38 of 2020 for condoning the delay in representation of the Appeal shall stand allowed. Thereafter, the Court shall number the appeal and dispose of the same as expeditiously as possible, preferably, within a period of twelve months from the date of receipt of a copy of this order. It is made clear, if the petitioner fails to pay the cost in time to the first respondent/plaintiff in time stipulated



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above, this order shall stand automatically withdrawn *Sine-die*.

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4. With the above direction, this Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

25.04.2023

NCC :Yes / No
Index :Yes / No
Internet :Yes / No
Speaking Order/Non-Speaking Order

sbn



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C.SARAVANAN,J.

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