



C.R.P(MD)No.261 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P(MD) No.261 of 2018

and

C.M.P(MD) No.1159 of 2018

1.Rengasamy

2.Ramasamy

3.Thangavel

...Petitioners

Vs.

1.Pappayee @ Palaniyammal (died)

2.B.Subramani

(2nd respondent is brought on record as legal heir of the deceased sole respondent vide Court order dated 27.07.2023 made in C.M.P(MD)Nos.10588 to 10590 of 2022)

...Respondents



C.R.P(MD)No.261 of 2018

WEB COPY

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 31.10.2017 passed in I.A.No.36 of 2017 in O.S.No.40 of 2011 on the file of the Principal District Court, Karur and allow this Civil Revision Petition.

For Petitioners : Mr.V. Balaji

For Respondents : Died – for R1

Batta due – for R2

ORDER

This Civil Revision Petition is filed against the order dated 31.10.2017 passed in I.A.No.36 of 2017 in O.S.No.40 of 2011 on the file of the Principal District Court, Karur.

2. The learned Counsel appearing for the petitioner has placed a copy of the order of the Court dated 17.07.2018 and submits that the Civil Revision Petition is squarely covered by the



C.R.P(MD)No.261 of 2018

WEB COPY

order of the Court, dated 17.07.2018 passed in C.R.P.(MD)No.91 of 2018.

3. On careful perusal of the same, it appears that in same issues this Court passed the said order. The relevant portion of the order is extracted herein under :-

“2. The revision petitioners are the defendants-1 & 2 and the respondent herein is the plaintiff in O.S.No.40 of 2011. The respondent herein/plaintiff has filed a suit in O.S.No.40 of 2011 before the learned Principal District Judge, Karur, for permanent injunction restraining the defendants, their men or any one on their behalf from alienating or encumbering over the suit properties including the plaintiff's 1/5th share to third parties. Due to non-appearance of the revision petitioners herein/defendants-1 & 2, the ex-parte decree was passed. Thereafter, the revision petitioners herein/defendants-1 & 2 have filed a interlocutory application in I.A.No.35 of 2017 in O.S.No.40 of 2011 to condone the delay of 1562 days in representing the application to set



C.R.P(MD)No.261 of 2018

aside the exparte decree. The learned Principal District Judge, Karur has dismissed the said application stating that the petitioners have not given any valid reason to condone the delay. Aggrieved over the same, the revision petitioners herein/defendants-1 & 2 have filed the present Civil Revision Petition.

3. The learned counsel appearing for the petitioners submitted that the revision petitioners having valid reasons mentioned in their written statement and that the ex-parte decree set aside petition was filed in time i.e., within the period of limitation and he prays for allowing this Civil Revision Petition.

4. It is well settled principles of law that application to condone the delay must be considered liberally and length of delay is not a criteria. The party must be given sufficient reasons for condoning the delay and the intention of the party must be bona fide and they must be given an opportunity to put forth their case on merits and should not be shut out at the threshold itself.

5. Keeping in mind the same, if the present case is looked into, this Court is of the view



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C.R.P(MD)No.261 of 2018

that the petition ought to be allowed and the order dated 31.10.2017 made in I.A. No.35 of 2017 in O.S.No.40 of 2011 on the file of the Principal District Court, Karur, is liable to be set aside, subject to certain conditions.

6. In the result, this Civil Revision Petition is allowed by setting aside the order dated 31.10.2017 made in I.A. No.35 of 2017 in O.S.No. 40 of 2011 on the file of the Principal District Court, Karur, and the application in I.A.No.35 of 2017 is allowed and the delay is condoned on condition that the petitioners are directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to the learned counsel for the respondent, within a period of two weeks from the date of receipt of a copy of this order.”

4. In the considered opinion of this court, the petitioners herein is also entitled for the same relief granted by this Court to the petitioners in C.R.P.(MD)No.91 of 2018.



C.R.P(MD)No.261 of 2018

WEB COPY

5. Following the same, this Civil Revision Petition is allowed by setting aside the order dated 31.10.2017 passed in I.A.No.36 of 2017 in O.S.No.40 of 2011 on the file of the Principal District Court, Karur, and the application in I.A.No.36 of 2017 is allowed and the delay is condoned on condition that the petitioners are directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to the learned counsel for the respondent, within a period of two weeks from the date of receipt of a copy of this order.

6. No costs.

7. Consequently, connected Civil Miscellaneous Petition is closed.

15.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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C.R.P(MD)No.261 of 2018

To
The Principal District Judge,
Principal District Court,
Karur.



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C.R.P(MD)No.261 of 2018

BATTU DEVANAND, J.

RM

C.R.P(MD) No.261 of 2018

15.11.2023



C.R.P(MD)No.261 of 2018

WEB COPY

C.R.P(MD)No.261 of 2018

BATTU DEVANAND, J.

This Civil Revision Petition is listed today under the caption “For Being Mentioned” at the request of the learned counsel for the petitioner to modify the condition to the extent of payment of cost to the learned counsel for the respondent.

2. Having heard Mr.V.Balaji, learned counsel for the petitioner, in our considered view, it is appropriate and reasonable to modify the order in the interest of justice.

3. It appears that in the order dated 15.11.2023 passed in C.R.P(MD)No.261 of 2018, the appearance of the learned counsel for the second respondent has been inadvertently mentioned as “batta due” instead of “No appearance”.



C.R.P(MD)No.261 of 2018

WEB COPY

4. Paragraph No.5 of the order, dated 15.11.2023 passed in C.R.P(MD)No.261 of 2018, shall be substituted by the following :-

“5. Following the same, this Civil Revision Petition is allowed by setting aside the order dated 31.10.2017 passed in I.A.No.36 of 2017 in O.S.No.40 of 2011 on the file of the Principal District Court, Karur, and the application in I.A.No.36 of 2017 is allowed and the delay is condoned on condition that the petitioners are directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to the Indian Association for the Blind (IAB Trust) bearing Account No.495936691 in Indian Bank, Tallakulam Branch, Alagarkoil Road, Madurai, within a period of two weeks from the date of receipt of a copy of this order and file a memo of payment of cost in the Court below within one week thereafter.”



C.R.P(MD)No.261 of 2018

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5. Registry is directed to carry out necessary correction in the order and issue fresh order copies to the parties within two days.

21.11.2023

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C.R.P(MD)No.261 of 2018

BATTU DEVANAND, J.

RM

C.R.P(MD)No.261 of 2018

21.11.2023