

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 07.09.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

C.R.P.(NPD)(MD)No.962 of 2016

and

C.M.P(MD) Nos.4817, 11515 of 2016 and 10066 of 2017

1. Saravanakumar

2. Muthulakshmi

... Petitioners/Respondents 1 and 2/  
Plaintiffs

-VS-

1. Suresh

... 1<sup>st</sup> Respondent/Petitioner/  
3<sup>rd</sup> Defendant

2. Palanichamy Gounder (Died)

3. Chellammal

4. Kavipraba

5. Shanmugapriya

6. Priyanga

... Respondents 2 to 6/  
Respondents 1 to 5/Defendants 1 to 6

7. Gnanagurusamy

... Proposed respondent

(R7 – Brought on record as legal heir of the  
deceased R2 vide order of this Court dated  
08.02.2018 made in C.M.P(MD) No.2391 of  
2017 in C.R.P(MD) No.962 of 2016)

**PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 22.03.2016 passed in I.A.No.64 of 2016 in O.S.No.10 of 2014 on the file of the District Munsif Court, Oddanchathiram.

For Petitioners : Mr.D.Venkatesh

For Respondents : Mr.H.Lakshmi Shankar – for R1

: Mr.G.Arjunan – for R4

: No appearance – for R3, R5 and R6

### **ORDER**

The present Civil Revision Petition has been filed by the petitioners under Article 227 of the Constitution of India, against the fair and decreetal order dated 22.03.2016 passed in I.A.No.64 of 2016 in O.S.No.10 of 2014 on the file of the District Munsif Court, Oddanchathiram.

2. The petitioners herein are the plaintiffs. The 1<sup>st</sup> respondent is the 3<sup>rd</sup> defendant, and the respondents 2 to 6 are the defendants 1, 2 and 4 to 6 before the Court below.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. It appears from the records that the 3<sup>rd</sup> defendant/1<sup>st</sup> respondent had moved an application under Section 5 of the Limitation Act to condone the delay of 416 days. The reason assigned by the 3<sup>rd</sup> defendant to set aside the *ex parte* decree is that he was suffering from jaundice and he was taking local treatment. He would further submit that since he was in bed rest for sometimes, he was not in a position to file an application to set aside the *ex parte* decree well in advance. In the meanwhile, there was a delay of 416 days. Hence, he prayed to condone the delay.

5. Though the learned counsel appearing for the plaintiffs/petitioners strongly objected, the Court below having considered the submissions on either side and also upon the ground that the valuable rights of the parties could only be adjudicated after the full trial, allowed the delay condonation application. Aggrieved with the order, the plaintiffs before the Court below is before this Court.

6. While perusing the suit, the suit is filed for the relief of declaration and for permanent injunction. As rightly observed by the Court below, such valuable rights between the parties cannot be allowed to be decided in an *ex-parte* manner.

7. The learned counsel for the petitioners would submit that the reasons assigned by the 3<sup>rd</sup> defendant/1<sup>st</sup> respondent are not believable. However, this Court is of the view that in its wisdom, the Court below has believed the reasons assigned by the 3<sup>rd</sup> defendant and has allowed the delay condonation application. If once the Court below exercised its discretion positively, then the revisional Court shall be slow in interfering the order of the Court below, unless the same is perverse. This Court could not see any perversity in the order of the Court below.

8. It is useful to refer the judgment of the Hon'ble Supreme Court reported in ***AIR-1998-SC-3222 (N.BalaKrishnan V. Krishnamoorthy)***. The relevant paragraph No.9 is as follows:

*“9. It is axiomatic that condonation of delay is a matter of discretion of the court [Section 5](#) of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.”*

9. Therefore, this Court is not inclined to interfere with the finding of the Court below. Accordingly, this Civil Revision Petition stands **dismissed**. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

**07.09.2023**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes / No  
ebsi

To  
1. The District Munsif Court,  
Oddanchathiram.

**C.R.P.(MD).No.962 of 2016**

**C.KUMARAPPAN,J.**

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**C.R.P(NPD)(MD)No.962 of 2016**

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