



C.R.P(MD)No.2576 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **14.08.2023**

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THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.2576 of 2018
and
C.M.P(MD)No.11347 of 2018

R.Pushparani

...Petitioner /Respondent /Plaintiff

Vs.

A.Kannatty

... Respondent /Petitioner/ 2nd defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order, passed in I.A. No.1724 of 2014 in O.S.No.333 of 2011 on the file of the II Additional Sub-Court, Trichirappalli, dated 14.02.2018.

For Petitioner : Mr.C.Vakeeswaran

For Respondent : No appearance

ORDER

The petitioner is the respondent / plaintiff and the respondent herein is the petitioner / second defendant before the Court below.



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2. The learned counsel for the petitioner would submit that she filed an application for the relief of partition and for rediction of accounts.

3. It appears that, an exparte decree was passed on 26.09.2012. Against which, an application for condonation of delay was filed by the respondent / second defendant, which was allowed by the Court below, on 14.02.2018. Aggrieved with the order, the instant Civil Revision Petition has been filed.

4. The learned counsel for the petitioner / plaintiff would submit that the delay of 692 days has not been explained and would also further submit that the reason for such delay has been mentioned as he was suffering from fever. Even, for that reason, no document has been filed. Therefore, the learned counsel would vehemently contend that the very order passed by the Court below in allowing the condonation application is perverse and prayed to allow the Civil Revision Petition.



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5. Despite name printed, no one appearing on behalf of the respondent.

6. I have given my anxious consideration to the submission of the learned counsel for the petitioner.

7. The one and the only submission put forth by the respondent / petitioner is that he has not substantiated, his defence through the document.

8. From the perusal of the affidavit, the respondent herein has stated that when the matter was posted on 26.09.2012, for filing of the written statement, she could not file the same as she was suffering from Viral fever. She has filed an application on 17.10.2012 itself, to set aside the exparte decree. However the same was returned due to some clerical error. And when she was representing the same, there was a delay of 692 days. On perusal of the petition as rightly observed by the learned counsel for the petitioner there is a 692 days delay in filing application to set aside the exparte decree. However, if we go by the averment made by the petitioner, it was only the delay in representation.



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9. To contradict such averment, the petitioner has not put forth any document. It is pertinent to mention here that the condonation of delay in representation is matter between the Court and the petitioner. However, the learned counsel for the petitioner invite the attention of this Court in respect of the prayer, where it has been stated that there was a delay of 692 days in filing the set aside petition.

10. On perusal of the affidavit, this Court could able to see filing of an application immediately from the *exparte* decree. Having considered all these aspects, it appears that the Court below allowed the application on payment of Rs.3,000/- as costs.

11. It is pertinent to mention here that when ever the Court below has exercised its discretion affirmatively under Section 5 of the Limitation Act, then the revisional Court can not interfere with the same. It is also relevant to refer, this being the suit for partition, that too between the mother and her children, this Court could not find any perversity in the order passed by the Court below.



12. It is useful to refer the case of the Hon'ble Supreme Court in the case of **BalaKrishnan V. Krishnamoorthy**, reported in **AIR-1998-SC-3222**. The relevant portion of the judgment is as follows-

Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

(Emphasis supplied by this Court)



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13. Therefore, this Court is of the view that there are no ground to interfere with the order passed by the Court below. Hence, the instant Civil Revision Petition stands **dismissed**.

14. At this juncture, the learned counsel for the petitioner would submit that the suit is of the year 2011 and prayed for an early disposal.

15. Having considered the year of the suit, this Court deems it appropriate to give a direction to the Court below to dispose of the suit as expeditiously as possible, preferably within a period of six months from the date of receipt of copy of this order. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

14.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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- 1.The II Additional Sub-Court,
Trichirappalli.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

Ls

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