



C.R.P.(MD)No.407 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.407 of 2017

and

C.M.P(MD) No.2038 of 2017

1. Sudalaimuthu

Ramaiah (died)

2. Sornam

3. Esakkimuthu

4. Chandra

5. Mariappan

6. Petchiammal

7. Mariammal

8. Sudalaimani

... Petitioners/Petitioners

-vs-

1. V.Mahalinga Boobathi

2. Mandirakonar

... Respondents/Respondents

(2nd respondent Mandira Konar called absent

set Exparte in both the Trial Court as well as

Appellate Court. Hence, notice to 2nd respondent

may be dispensed with)

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, as against the fair and decreetal order dated 07.12.2016 passed in I.A.No.13 of 2013 in Unregistered Appeal Suit on the file of the Principal Sub Court, Tirunelveli.



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For Petitioners : Mr.S.P.Maharajan

For Respondents : No appearance

ORDER

The present Civil Revision Petition has been filed against the dismissal order passed by the Court below in an application filed for the condonation of 328 days delay in filing the connected appeal.

2. Notice served upon the first respondent herein as affixed, and as against the second respondent, since he was set exparte before the Court below, the petitioner herein has given up the case against him.

3. Despite the name of the first respondent is printed in the cause list, no one appeared on behalf of him.

4. The learned counsel for the petitioners would submit that the petitioners herein are the aged persons and they are also having impairment in the eyesight and are also suffering from hard of hearing. It is also the further submission of the learned counsel for the petitioners that the first petitioner/2nd defendant had fell during the year 2012. Therefore there is a



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delay of 328 days in filing the connected appeal. Hence, he prayed to allow this petition.

5. The application was resisted by the respondent on the ground that the petitioners have falsely filed the affidavit and the reasons stated in the affidavit cannot be believed. The Court below, on considering either side, has disbelieved the case of the petitioners and ultimately, dismissed the application, with a finding that there was an enormous delay of 328 days and that there was no sufficient cause.

6. The learned counsel for the petitioners would vehemently submit that the very age of the first petitioner is more than 75 years, and they have ailments, such as, impairment of eye sight and hard of hearing, and in addition to that the first petitioner/2nd defendant had a fell. Therefore, they have got a sufficient cause to condone the delay based upon the above ground.

7. It is also the further submission of the learned counsel for the petitioners that, the counsel appearing before the Court below has caused



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delay in getting the certified copy and the counsel had also not properly guided the petitioners, that is why, the petitioners have engaged another counsel and in the meanwhile, there was a delay of 328 days.

8. However, the Court below dismissed the application. It is settled principle of law that, whenever an application is filed for condonation of delay, in filing the application, the Court must be liberal. It is useful to refer the judgment of this Court in ***C.R.P(MD) No.2774 of 2010 (NPD) (P.Arumugam Vs.S.P.Kuzhanthivel)***. Paragraph No.8 is as follows:

*“8. I have heard the rival submissions. The Honourable Supreme Court and this Court have been repeatedly pointing out that the Courts should adopt liberal approach in matters of delay, particularly the delay in filing the appeal. Unless the delay is shown to be mala fide and the person causing delay had obtained certain advantage because of the delay, the Courts in normal course should condone the delay. In **University of Delhi Vs Union of India and others reported in 2019 SCC online 2634**, had held that the Court should be liberal in condonation of delay. The lower*



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Appellate Court had held that the petitioner has not satisfactorily explained the delay of 1093 days. The facts narrated above would show that a large part of the delay is due to the delay on the part of the Court in rectifying the errors that had crept in the decree. The appellate Court has not adverted to this vital aspect.”

9. Therefore, considering the age of the first petitioner, this Court is of the view that there is sufficient cause for condonation of delay.

10. In the result, this Civil Revision Petition is **allowed**. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Principal Sub Court,
Tirunelveli.



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