



C.R.P.(NPD).No.958 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.958 of 2021

and

C.M.P. No.7743 of 2021

A.Ravichandran

... Petitioner

Versus

1.K.Venkatesalu

2.Padmavathy

3.K.M.L.Rao

4.Rajeswari

5.M/s.Draupathi Krishnabharathi Trust,

Rep.by its trustee

K. Venkatesalu

Door No.AC-84, Anna Nagar,

Chennai – 600 040.

Also at No.138, Rangai Gowder Street,

Coimbatore – 641 001.

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 14.10.2020 made in I.A.No.302 of 2019 in O.S.No.347 of 2009 on the file of the learned III-Additional Subordinate Court, Coimbatore.

For Petitioner : Mr. N. Krishnakumar,
for M/s. Sarvabhauman Associates

For Respondents : Mr. M. Duaya Kumar (for R2)

: R1, R3, R4 & R5 (Died)



C.R.P.(NPD).No.958 of 2021

ORDER

WEB COPY

This Civil Revision Petition is filed challenging the order passed by the Trial Court allowing the application filed by the fifth respondent herein, in I.A.No.302 of 2019 in O.S.No.347 of 2009 on the file of the learned III-Additional Subordinate Court, Coimbatore, seeking to condone the delay of 316 days in filing the petition to set aside the *ex-parte* decree passed against them.

2. The petitioner herein filed the above said suit seeking a declaration of title in respect of “A” schedule property and for recovery of possession in respect of “B” schedule property and for other reliefs. The said suit was decreed *ex-parte* on 10.08.2018. Therefore, the fifth respondent filed an application to set aside the *ex-parte* decree along with the petition to condone the delay of 316 days in filing the petition to set aside *ex-parte* decree. The said application was filed during the month of April 2019. In the affidavit filed in support of the condone delay petition, it was stated by the fifth respondent, who had sworn the affidavit, that he was aged 79 years old and he was ailing with illness due to old age. It was further stated that he was suddenly fell ill during the last week of July, 2018, and he had taken treatment for the same. Further, as per advice tendered by his Doctor, he was



C.R.P.(NPD).No.958 of 2021

constrained to take bed rest for six months due to the age related illness.

WEB COPY

Therefore, it was stated in the affidavit that he could not meet his counsel and instruct him suitably to get along with the suit. In such circumstances, the *ex-parte* decree order was passed against the respondents and there was some delay in filing the petition to set aside the said *ex-parte* decree, due to the above-mentioned reasons. It was also averred by the fifth respondent that the other respondents were his siblings and he had been looking after the litigation on their behalf also.

3. The Court below taking into consideration the dispute in the suit is with regard to the title to an immovable property, had taken a liberal approach and accepted the reasons assigned by the fifth respondent and condoned the delay by directing respondents to pay a sum of Rs.3,000/- as costs. Aggrieved by the same, the petitioner is before this Court.

4. The learned counsel for the petitioner mainly submitted that the reasons assigned by the respondents with regard to the illness of the fifth respondent was not at all proved by any oral or documentary evidence and hence, the Court below ought not to have condoned the delay.



C.R.P.(NPD).No.958 of 2021

WEB COPY

5. It is well settled law that if there is a conflict between the procedural law and the substantial rights of the parties, the latter will prevail over the former. In this case, the Trial Court taking into consideration, the dispute with regard to the title to an immovable property, decided to exercise its discretion in favour of the respondents and condoned the delay by imposing the costs. In such circumstances, I do not want to interfere with the exercise of discretion by the Court below, when there is no apparent error in exercising its discretion.

6. Accordingly, the Civil Revision Petition is dismissed. Having regard to the fact the suit is of the year 2009, the Trial Court is directed to dispose of the suit as expeditiously as possible. Consequently, the connected miscellaneous petition is also closed. No Costs.

14.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Case Citation : Yes / No

klt



C.R.P.(NPD).No.958 of 2021

To:

WEB COPY

The III-Additional Subordinate Court,
Coimbatore.



WEB COPY



C.R.P.(NPD).No.958 of 2021

S. SOUNTHAR. J.,

klt

C.R.P.(NPD).No.958 of 2021
and
C.M.P. No.7743 of 2021

14.02.2024