



CRP.No.1299 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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1.Mallieswari
2.C.Senthil Kumar

... Petitioners

Vs.

1.Meenammal @ Meena
2.B.Renganayaki

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 03.03.2021 made in IA.No.1 of 2019 in A.S.SR.No.18760 of 2019 on the file of the Principal Judge, City Civil Court, Chennai.

For Petitioners : Mr.A.M.Krishnamoorthy

For Respondents : M/s.Siva & Sesu Associates



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ORDER

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This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the petitioners seeking condonation of delay of 1587 days in filing the first appeal.

2. The petitioners herein laid a suit seeking partition in OS.No.2186 of 2012 on the file of the XV Assistant Judge, City Civil Court, Chennai. The said suit was dismissed on 10.08.2015. Aggrieved by the same, the petitioners/plaintiffs preferred the first appeal only during December 2019 with the delay of 1587 days. In the affidavit filed in support of the condone delay petition, it was averred by the petitioners that when the suit was posted for cross examination of PW1 on 25.06.2013, there was misunderstanding between the petitioners and opposite counsel and therefore, they got change of vakalat from their counsel on 09.06.2014 and appointed yet another Advocate by name Mr.Veeraraghavan and his son.

3. It was further stated by the petitioners that their new counsel advised them to contact him only if he was informed of the next date of



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hearing. During December 2019 the respondent attempted to construct the building in the suit property and the petitioners preferred a police complaint in this regard. During enquiry it came to the knowledge of the petitioners that the suit was dismissed as early as 21.08.2015 and thereafter, they had taken steps to file the present application. It was further stated that their counsel namely, Mr.Veeraraghavan died in the year 2018 and petitioner got change of vakalat from his son in the year December 2019 and thereafter the condone delay petition was filed by the petitioners. The Court below based on the records found that DW1 was absent for nearly 9 hearings, i.e., on 29.08.2013, 19.09.2013, 04.10.2013, 24.10.2013, 02.12.2013, 20.12.2013, 22.01.2014, 10.02.2014 and 27.02.2014. As per the affidavit shown by the petitioners they got change of vakalat from earlier counsel on 09.06.2014. However, it is seen from the impugned order that even prior to that the petitioners were absent for several hearings. Further as per affidavit shown by the petitioners, the papers were entrusted to new counsel in the year 2014 but however, the petitioners failed to follow the case from 2014 to 2019 for nearly five years. Hence, the petitioners cannot turn around and put the entire blame on the Advocate. The petitioners are expected to explain the delay after they



engaged new counsel. When the case was part heard, it is the duty of the petitioners to follow the case. In the case on hand, the petitioners failed to follow the part heard case for nearly five years. Therefore, there is a clear negligence and inaction on the part of the petitioners and therefore, the petitioners failed to show sufficient cause within a meaning of Section 5 of the Limitation Act.

4. The learned counsel for the petitioners submitted that while considering the petition to condone the delay in filing applications the Court should take liberal approach in this regard. He relied on the following judgments;

1) In ***Velayutha Gounder (Died) and others, Vs. Govindasamy***, reported in **2020 (1) MWN (Civil) 88**.

2) The judgment of the Hon'ble Apex Court in C.A.No.4628 of 2023 in Raheem Shah & anr. Vs. Govind Singh & Ors. = 2023 INSC 651.

3) In ***Metal Rolling Works Ltd. Vs. Haresh Kapadia and Ors***, the order passed by this interim application in I.A.No.2047 of 2019 in Suit No.3350 of 2009.



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5. In all these authorities it is clearly mentioned while considering the petition to condone the delay in filing, the Court should take liberal approach when there is no negligence or inaction or malafides is imputable to the party. In the case on hand, the petitioners who entrusted the part heard case to the new counsel in the year 2014 failed to follow up the case for nearly five years till 2019. Therefore, there is clear negligence and inaction on the part of the petitioners. Hence, the law laid down in the above case laws will not help the petitioners for explaining huge delay of 1587 days. I do not find any illegality or irregularity in the order passed by the Court below and accordingly, the Civil Revision Petition is dismissed. No costs.

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Index : Yes / No

Internet : Yes / No

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To

The Principal Judge, City Civil Court, Chennai.

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