



C.R.P.(NPD).No.2171 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.2171 of 2021
and CMP.No.16455 of 2021

1.Nataraj

[died vide separate sheet effects cause title accepted vide Court order dated 17.09.2021 made in CMP.No.15029 of 2021 in CRP.Sr.No.51937 of 2021 GCSJ]

2.Krishnasamy

3.Krishnaveni

4.Rajasekaran

5.Yuvarani

6.Kamala

7.Vimala

8.Komarayal

9.Vijayalakshmi

10.Santhosh @ Karunambal

11.Haritha

12.Harini

13.Minor Haridas

[petitioner – 1 died. Petitioners 8 to 13 are brought on record as Lrs of the deceased P-1 viz., Nataraj vide Court order dated 11.01.2024 made in CMP.Nos.778, 780 of 2024 in CRP.No.2171 of 2021 by SSJ]

... Petitioners



C.R.P.(NPD).No.2171 of 2021

vs.

1.Kamalam
2.Rangammal
3.Lakshmi
4.Rukumani

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 16.03.2021 passed in I.A.No.1 of 2019 in O.S.No.168 of 2014, on the file of the III Additional District and Sessions Court, Erode @ Gobichettipalayam.

For Petitioners	: Mr.Mr.K.Govi Ganesan
For Respondents	:Mr.J.Franklin

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition to condone the delay of 999 days in seeking to set aside the ex-parte decree passed against them on 09.12.2015.



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2. The respondents 1 and 2 filed a suit for partition against the petitioners and other respondents. The said suit was decreed ex-parte on 09.12.2015 owing to the failure of the petitioners to file a written statement. Thereafter, they filed an application to set aside the ex-parte decree with a delay of 566 days. The said application was withdrawn by the petitioner on 24.06.2018 with liberty to file fresh application to set aside the ex-parte decree along with written statement. However, the second application was filed by the petitioners only on 06.09.2019 with a delay of 999 days. The Court below dismissed the said application on the ground that the petitioners failed to show sufficient cause and aggrieved by the same, the petitioners are before this Court.

3. In the affidavit filed in support of the delay condonation petition, it was stated by the petitioners that after receipt of summons they engaged one Advocate viz., S.A.Mohammed Mubarak for conducting case on their behalf but they failed to contact him regularly. Only after receipt of



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notice in final decree proceeding in April 2017, the petitioners had taken steps to set aside the ex-parte decree. Though the application was filed in I.A.No.208 of 2018, the petitioners failed to file any written statement along with said application. Hence, the earlier application filed by the petitioners was withdrawn with liberty to file a fresh application to set aside the ex-parte decree along with written statement. However, in the affidavit filed in support of the delay condonation petition, it was further stated by the petitioners that blood sugar level of the first petitioner increased during February 2018 and hence he was admitted in hospital and the second petitioner who has sworn the affidavit had taken care of the first petitioner till 08.03.2018. It was further stated that the second petitioner suffered road accident on 26.05.2018 and he got recovered only on 06.09.2019. However, the discharge summary issued by S.K.Hospital Gobichettipalayam, wherein the second petitioner got treatment marked as Ex.P2 dated 05.06.2018 would suggest the petitioner was discharged earlier. The earlier application filed by the petition was dismissed with liberty to file a fresh application on 24.06.2018. However, the petitioners have not taken any steps till 06.09.2019 to file the second application to set aside the ex-parte decree. Though the



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petitioners 1 and 2 had some medical grounds during February 2018 to June 2019, it is not known as to why the other petitioners have not taken any steps to file fresh application immediately on withdrawal of the earlier application. When the discharge summary issued by S.K.Hospital, Gobichettipalayam, would suggest the petitioners got recovered during June 2018, however, the present application has been filed by the petitioners only on 06.09.2019. This would clearly indicate that there is a huge delay on the part of the petitioners. Absolutely there is no explanation on the part of the petitioners for the delay period from June 2018 to September 2019. In such circumstances, the Court below rightly exercised its discretion against the petitioners and dismissed the application to condone the huge delay of 999 days. The petitioners failed to show sufficient cause within the meaning of Section 5 of Limitation Act.

4. I do not find any infirmity or irregularity in the order passed by the Court below and accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

29.01.2024

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



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S.SOUNTHAR, J.

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To

The III Additional District and Sessions Court,
Erode @ Gobichettipalayam.

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