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C.R.P.No.3356 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.3356 of 2024
and C.M.P.No.18010 of 2024

Kaliammal (Died)

R.Mohanasundaram

... Petitioner

Vs

Rathinam

... Respondent

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, pleaded to set aside the fair and final order dated 07.02.2024 in I.A.No.309 of 2018 in O.S.No.111 of 2010 on the file of the Sub Court, Perundurai.

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.B.Singaravelu

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Subordinate Judge, Perundurai, in I.A.No.309 of 2018 in O.S.No.111 of



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2010 on 07.02.2024.

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2. The brief facts of the case is that the petitioner is the 2nd defendant in the suit filed by the respondent/plaintiff in O.S.No.111 of 2010 on the file of the Sub Court, Perundurai, for partition and permanent injunction. When the case was posted for cross examination of PW1 on 12.07.2017, the defendants did not cross examine PW1 and thereafter, an ex parte judgment came to be passed on 02.08.2017. On coming to know about the same, the petitioner had filed a petition in I.A.No.309 of 2018 under Section 5 of the Limitation Act to condone the delay of 224 days in filing the petition seeking to set aside the ex parte decree. The petitioner/2nd defendant had contended that since he was suffering from viral fever, he was unable to cross examine PW1 on 12.07.2017. The respondent had filed a counter contending that the petitioner had knowledge about the ex parte decree and he had also appeared in yet another suit in O.S.No.149 of 2011 through the very same counsel and that he had filed the petition with delay only to drag on the proceedings. The trial Court, finding that no sufficient cause had been shown by the petitioner, had dismissed the application in I.A.No.309 of 2018 vide order dated 07.02.2024. Aggrieved over the same, the present revision petition has been



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filed by the petitioner.

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3. The submissions of the learned counsel for the petitioner are as follows :-

3.1. When the suit filed by the plaintiff/respondent in O.S.No.111 of 2010 was posted for cross examination of PW1 on 12.07.2017, the petitioner was suffering from viral fever and thereby, he was unable to appear before the trial Court. Despite furnishing of the Doctor certificates Ex.P1 to Ex.P3 to show that the petitioner was suffering from viral fever on 10.07.2017, 02.09.2017 and 24.01.2018, the trial Court erred in not accepting the same.

3.2. It is true that the petitioner had appeared in another suit on 18.12.2017, whereas, subsequently, he was affected with fever on 24.01.2018, therefore, he was unable to file the petition on time. Only due to the illness of the petitioner, there was a delay of 224 days in filing the restoration petition.

3.3. The word “sufficient cause” should be given liberal construction so as to advance sustainable justice when there is no inaction or negligence nor want of bonafides. The rules of limitation are not meant to destroy the rights of parties.

3.4. The petitioner and the respondent are siblings and that by



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condoning the delay, no prejudice would be caused to the respondent. The petitioner has also undertakes to compensate the respondent for the inconvenience caused on her and the petitioner is also ready to cooperate for the speedy disposal of the trial.

3.5. Subsequently, consequent to the death of the petitioner's mother, the respondent has also filed an application for modification and if the ex parte decree is set aside, all the issues can be settled in the trial. Hence, he prayed to set aside the order passed on 07.02.2024 in I.A.No.309 of 2018

4. The respondent has filed a detailed counter.

5. Learned counsel for the respondent has stoutly and vehemently opposed the present petition stating that though the petitioner is the brother of the respondent, he in order to deny the rights over the property to the respondent, has delayed the progress. He further submitted that though the petitioner claims that he was suffering from viral fever on 17.07.2017, he had appeared in yet another suit on 18.12.2017 through the very same counsel and therefore the trial Court, rightly finding that the petitioner had not shown any sufficient cause, had



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dismissed the petition.

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6. Heard both sides and perused the materials available on record.

7. It is seen that the petitioner and the respondent are siblings and the suit has been filed for partition. Though there had been a lapses on the side of the petitioner, this Court is of the opinion that since it is a suit for partition, one opportunity may be given to the petitioner in the interest of justice to defend his case.

8. In view of the above, this Civil Revision Petition stands allowed and the order dated 07.02.2024 in I.A.No.309 of 2018 in O.S.No.111 of 2010 on the file of the Sub Court, Perundurai, is hereby set aside and the delay of 224 days in filing the petition seeking to set aside the ex parte decree is condoned on condition that the petitioner deposits a sum of **Rs.15,000/-** before the trial Court as costs within a period of **two weeks** from the date of receipt of a copy of this order. On such deposit being made by the petitioner, the amount shall be disbursed to the respondent on her appearance.



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9. Further, the petitioner shall also file an Affidavit before the Court concerned undertaking to cooperate for the speedy disposal of the suit in O.S.No.111 of 2010. The trial Court shall take every endeavor to complete the trial as expeditiously as possible, preferably, within a period of **six months** from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

01.10.2024

Note : Registry is directed to return the original papers to the counsel for the petitioner

Index : Yes / No

Neutral Citation : Yes / No
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To
The Sub Court, Perundurai.



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A.D.JAGADISH CHANDIRA, J.

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