



WEB COPY



C.R.P.No.3087 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.3087 of 2021 and
C.M.P.No.21728 of 2021

Murugan

... Petitioner

Vs.

1.Mrs.Ambika
2.Mrs.Shanthi
3.Mrs.Rajeswari

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to call for the records of order dated 14.02.2020 made in I.A.No.9 of 2019 in Un.C.M.A.No.514 of 2019 on the file of Principal District and Sessions Judge, Thiruvallur District.

For Petitioner : Mr.T.P.Segar

For respondent 1 : M/s.R.Nandhini
for M/s.R.Jaganathan

For respondent 2 : Mr.P.K.Deepa Divyavarthini
For respondent 3 : M/s.P.G.Aishwariya



WEB COPY

C.R.P.No.3087 of 2021



ORDER

The Civil Revision Petition is filed challenging the order passed by the First Appellate Court dismissing the application filed by the petitioner seeking to condone the delay of 304 days in filing appeal as against the order passed by the Trial Court appointing receiver in a partition suit.

2. The 1st respondent herein filed a suit for partition against the petitioner and other respondents seeking partition of 1/4th share. Pending suit, she filed I.A.No.518 of 2009 seeking appointment of Receiver. The said application was allowed by the Trial Court on 05.02.2018. Aggrieved by the same, the petitioner herein preferred an appeal before the regular First Appellate Court with a delay of 304 days. The First Appellate Court not satisfied with the explanation averred by the petitioner, dismissed the condone delay petition. Aggrieved by the same, the petitioner is before this Court.



3. The learned counsel for the petitioner submitted that originally the petition for appointment of Receiver was posted along with suit and later on, the same was *suo moto* taken up by the Trial Court. Without hearing the petitioner, an order was passed. Hence, the petitioner had no knowledge about the order appointing Receiver and he acquired knowledge about the appointment of Receiver only after receipt of notice from 1st respondent during December 2018. Immediately, the appeal has been filed challenging the order of appointment of Receiver. The First Appellate Court, without considering the reasons assigned by the petitioner explaining the delay, erroneously dismissed the condone delay petition.

4. The learned counsel for the respondents submitted that Trial Court passed an order of appointing Receiver only after hearing both the parties on 05.02.2018. The petitioner, without any cause, waited for nearly one year and then filed appeal without properly explaining the delay. Therefore, the First Appellate Court rightly dismissed the condone delay petition..



WEB COPY

5. It is seen from the adjudication papers in I.A.No.518 of 2009 filed in the additional typed set of papers, originally on 22.01.2016, the Trial Court passed following order in I.A.No.518 of 2009 “Call along with suit”. Thereafter, the matter has been adjourned from time to time. Finally, on 08.06.2017, the Trial Court passed following order “Enquiry taken as heard and posted for orders on 03.07.2017” Thereafter, as the order was not ready, the matter had been adjourned from time to time on 03.07.2017, 31.07.2017, 14.09.2017, 13.10.2017, 27.11.2017, 10.01.2018, 03.02.2018. Finally, the order was pronounced on 05.02.2018.

6. It is seen from the typed set of papers that 1st respondent herein issued a notice dated 18.12.2018 referring the appointment of Advocate Commissioner in I.A.No.518 of 2009. Thereafter, the petitioner issued a reply notice on 27.12.2018 wherein he admitted that I.A.No.518 of 2009 was pending for long time and he filed written arguments along with documents and citations. But without considering the same, the order was passed on 05.02.2018 by appointing Receiver. Therefore, the contention of the learned



counsel for the petitioner that petitioner acquired knowledge about the appointment of Receiver only after receipt of notice by 1st respondent during December 2018 is not acceptable to this Court. In his reply notice, he clearly mentioned about the written arguments submitted by him. He has also gone to the extent of saying order was passed without considering the written arguments filed by the petitioner. It is also seen from the adjudication in I.A.No.518 of 2009, the matter was heard on 08.06.2017 and thereafter, the same was adjourned from time to time. Finally, an order of appointing Receiver was passed only on 05.02.2018. When the petitioner is represented by the counsel in the Court, it is not open to him to say that he had no knowledge about the appointment of Receiver by the Trial Court on 05.02.2018 and he acquired knowledge only during December 2018. Hence, the reasons assigned by the petitioner is not acceptable to this Court and the petitioner failed to explain the delay in filing the appeal challenging the order of appointment of Receiver. The First Appellate Court rightly dismissed the application filed by the petitioner. I do not find any error in the order impugned in this revision. Accordingly, the Civil Revision Petition stands dismissed.



C.R.P.No.3087 of 2021

WEB COPY

7. Having regard to the fact that the suit is of the year 2009, the Trial Court is directed to dispose of the suit as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

19.02.2024

Index : Yes / No
Internet : Yes / No
nr

To

The learned Principal District and Sessions Judge,
Thiruvallur District.



WEB COPY



C.R.P.No.3087 of 2021

S.SOUNTHAR, J.

nr

CRP.No.3087 of 2021 and
C.M.P.No.21728 of 2021

19.02.2024