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CRP.No.3271 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.3271 of 2023 and C.M.P.No.20160 of 2023

Bathirappan

.. Petitioner

Versus

1.R.Santhamani

2.Moorthy

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed by the Sub-Ordinate Court, Mettupalayam in I.A.No.2 of 2023 in O.S.No.1464 of 2015 dated 24.04.2023 and to allow the interlocutory application.

For Petitioner : Mr.J.Pradeep

For Respondents : Mr.K.Goviganesan for R1
Mr.Venkata Subban for R2
for M/s.Sarvabhauman Associates

ORDER

Challenge has been made to the order rejecting the application filed to condone the delay of 2174 days in filing to set aside the exparte decree passed against the petitioner/first defendant.



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2. The first respondent herein filed a suit against her brothers claiming partition in suit properties. The suit came to be decreed exparte on 02.12.2016. To set aside the exparte decree, application has been filed by the petitioner under Section 5 of the Limitation Act.

3. It is the contention of the petitioner before the Trial Court that the petitioner was affected by jaundice and further was affected by Covid-19 and hence, could not meet his advocate in time, therefore, the suit was decreed. Therefore, there was a huge delay. The Trial Court taking note of the fact that the allegations of the petitioner was not established and the delay has not been satisfactorily explained dismissed the application vide the impugned order.

4. The learned counsel for the petitioner would submit that the petitioner fell ill due to jaundice from the year 2016 and subsequently she was affected by Covid-19, hence, she could not attend meet her advocate. Therefore, seeks to condone the delay more liberally.

5. Heard both sides and perused the materials placed on record.



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6. The suit has been filed by the sister against her brothers claiming 5/16th share in the property. The reasons assigned for condonation of such huge delay that the petitioner fell ill due to jaundice and subsequently affected by Covid-19 and she has severe respiratory issues, therefore, he could not meet her advocate which resulted in exparte decree. To substantiate such specific allegations, no evidence whatsoever is available. Therefore, once the delay has not been explained and allegations have not been proved in the manner known to law, as a matter of right particularly in the partition suit which has been almost reached finality cannot be unsettled by one of the co-owner, who has suffered a decree.

7. The Court, in exercising discretion, particularly in these types of petitions, has to see the conduct, behaviour and attitude of a party relating to its inaction or negligence. The above factors are relevant to be taken into consideration as the fundamental principle is that Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach. There is an increasing tendency to perceive delay even in a non-serious matter. Hence, the delay due to nonchalant attitude should be curbed at the



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initial stage itself. Having allowed the exparte decree to remain for more than 8 years, suddenly filing applications that too with vague allegations itself indicate that the application is filed only in order to thwart the final decree proceedings. Such view of the matter, I do not find any merits in this Revision and the same stand dismissed. Consequently, connected miscellaneous petition is closed.

05.11.2024

dhk

Index : Yes/No

Internet : Yes/No

To,

The Sub Judge,
Sub-Ordinate Court, Mettupalayam



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N.SATHISH KUMAR, J.,

dhk

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