



C.R.P.No. 3183 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **01.10.2024**

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No. 3183 of 2022

and

C.M.P.No.16960 of 2022

1.T.G.Ramamoorthy

R.N.Rajan (Died)

2.R.N.Babu

3.R.Elavathy

4.Srividhya

5.Krithika

6.Sanjusree

...Petitioners

Vs.

1.B.Selvaraj

2.B.Soundarajan

V.Sridhar Babu (Died)

3.Shanthi

4.Ashok Kumar

5.Premkumar

...Respondents



PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Fair and Decreetal order, dated 03.08.2022 passed in E.A.No.3 of 2022 in E.A.No.103 of 2010 in E.P.No.38 of 2007 in O.S.No.105 of 1983, by the Hon'ble District Munsif Court, at Chengalpattu by allowing the above Civil Revision Petition.

For Petitioner : M/s.E.Prabu

For Respondents : M/s.L.J.Vengatesh [for R1 & R2]

: No appearance [R3 to R5]

ORDER

The revision has been filed to set aside the Fair and Decreetal order, dated 03.08.2022 passed in E.A.No.3 of 2022 in E.A.No.103 of 2010 in E.P.No.38 of 2007 in O.S.No.105 of 1983, by the District Munsif Court, Chengalpattu, dismissing the petition filed under Section 5 of the Limitation Act, seeking to condone the delay of 692 days in filing restore petition to restore E.A.No.103.2010.

Brief facts:-

2. The suit O.S.No.105 of 1983, on the file of the District Munsif



Chengalpattu, has been filed by one Kasiammal against one Baggiammal and 9 others for partition of properties belonging to one Baggiammal.

During the pendency of the trial, the plaintiff, Kasiammal and the defendants, Baggiammal and Nagabushnam Ammal died and their respective legal heirs were impleaded in the suit. In the present CRP, respondent 1 and 2 are the legal heirs of the original plaintiff, Kasiammal and respondents 3 to 5 are the legal heirs of the 2nd defendant, Sarojaammal.

3. The preliminary decree in the suit was passed on 19.04.1994. Thereafter, the final decree was passed on 24.02.1996. The 1st and the 2nd respondents herein had filed EP.No.38 of 2007, seeking to execute the final decree passed in O.S.No.105 of 1983. While so, the petitioners as third parties had filed E.A.No.103 of 2010. During the enquiry, the executing Court had directed the petitioners to take steps. Since the petitioners had not taken steps, EA.No.103 of 2010 was dismissed for default on 11.02.2020. Subsequently, the petitioners had filed EA.No.3 of 2022 seeking to restore EA.No.103 of 2010 with an application to condone the delay of 692 days. The Trial Court finding that the petitioners have not shown any sufficient cause had dismissed the application. Challenging the same, the present CRP



has been filed.

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4. Mr.E.Prabhu, the learned counsel for the petitioners would submit that E.A.No.103 of 2010 was dismissed for default on 11.02.2020. While, the petitioners were taking steps to file an application, the 1st lock down on account of Corona pandemic was imposed on 24.03.2020. During the pandemic, the 1st petitioner's eldest son, R.N. Rajan, who had been suffering from severe chronic liver disease since 2019, was hospitalized in Chennai. He was advised to undergo a liver transplant, but he passed away on 11.07.2020, without responding to treatment. The 1st petitioner's second son Mr.Thyagarajan had contracted COVID infection and he was hospitalized at Annai Arul Hospital, Tambaram, Chennai and he was continuously taking treatment for post covid complications. The 1st petitioner's third son also met with a road accident and he had suffered head injuries and he was hospitalized in Deepam Hospital, Tambaram, Chennai. The 1st petitioner who was following the case being an Octogenarian was preoccupied with the sons and further he was also ill and thereby he was unable to file the application in time. However, the application was filed on 03.01.2022, with a delay of 692 days. In this case, as per simple calculation, there is a delay of 4/11



692 days, however, taking into consideration the order passed by the Hon'ble Supreme Court in suo motu Writ Petition (C) No. 3 of 2020, the period from 15.03.2020 to 28.02.2022 has to be excluded and if this period is excluded, the actual delay would be only 6 days.

5. He would further submit that the intention of the petitioners is not to delay the EP and only on account of the ill fate of the 1st petitioner and the covid pandemic, there has been a delay of 692 days. Despite the petitioners satisfying the Court and showing sufficient cause, the learned Trial Judge had not taken into consideration the reasons for the delay and had dismissed the application. He would submit that the petitioners may be given one more chance and that the petition may be allowed on imposition of costs and terms in the interest of justice.

6. Per contra, Mr.L.J.Vengatesh. learned counsel appearing for the respondents would submit that the preliminary decree has been passed on 19.04.1994 and the final decree has been passed on 24.02.1999. EP.No.38 of 2007 has been filed in the year 2007 and the petitioners have filed EA.No.103 of 2010 in the year 2010 only to delay and protract the execution

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proceedings. Therefore, he would submit that the petitioners have not been vigilant and they have wilfully not appeared before the Trial Court on 11.02.2020 and the Trial Court finding that the petitioners have not shown any sufficient cause had rightly dismissed the application.

7. The learned counsel for the respondents would further submit that the conduct, behavior and the attitude of the party relating to its inaction for negligence are relevant factors to be taken into consideration. It is the fundamental principle that the 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. In support of his contention, he would rely on the judgment of the Hon'ble Supreme Court reported in **(2013) 12 SCC 649 – Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others.**

8. The learned counsel for the respondents would also rely on the judgment of the Hon'ble Supreme Court reported in **2024 SCC Online SC 513 – Pathapati Subba Reddy (Died) by L.Rs. and Others Vs. Special**



Deputy Collector (LA), wherein the Supreme Court has held as follows:-

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“17. It must always be borne in mind that while construing ‘sufficient cause’ in deciding application under Section 5 of the Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of a decree-holder accrues and this right ought not to be lightly disturbed. The decree-holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights”

9. In reply, the learned counsel for the petitioners would submit that in both the cases referred to by the learned counsel for the respondents, the periods of delay are enormous. In the case of **Esha Bhattacharjee** (cited supra), the delay is 1110 days and in the case of **Pathapati Subba Reddy** (cited supra) the delay is 5659 days. Whereas, in this case, as per the directions issued by the Apex Court, in suo motu Writ Petition (c) No.3 of 2020, the period from 15.03.2020 to 28.02.2022 has to be excluded and if this period is excluded, the delay is only 6 days and he would submit that the reasons adduced by the petitioners would show that the petitioners have shown sufficient cause in condoning the delay.



10. Heard the learned counsel on both sides and perused the materials available on record.

11. EA.No.103 of 2010 has been dismissed for default on 11.02.2020.

The petition for restoration along with the condonation of delay of 692 days has been filed on 03.01.2022. The reasons adduced by the petitioners for seeking condonation of delay are that the 1st petitioner's eldest son died on 11.07.2022 due to liver disease, the second son was affected by covid infection and was admitted in the hospital and the third son met with an accident and he was also hospitalized. Further, the 1st petitioner who was taking care of the case is also an octogenarian suffering from cardiac deceases. Further, in the instant case, taking into consideration the directions issued by the Apex Court, in suo motu Writ Petition (c) No.3 of 2020, the period from 15.03.2020 to 28.02.2022 has to be excluded and after excluding the said period, the delay is only 6 days. Whereas, in the judgments referred to by the learned counsel for the respondents the periods of delay are enormous. In the case of *Esha Bhattacharjee* (cited supra), the delay is 1110 days and in the case of *Pathapati Subba Reddy* (cited supra)



the delay is 5659 days. Therefore, the judgments referred to by the learned counsel for respondents would not apply to the present case.

12. In view of the above, this Court is of the opinion that the petitioners have shown sufficient cause in filing the petition seeking to condone the delay. However, taking into the inconvenience caused to the respondents, this Court is of the opinion that costs of Rs.10,000/- can be imposed on the petitioners.

13. Accordingly, the above revision is allowed. The order passed by the District Munsif Court in E.A.No.3 of 2022 in E.A.No.103 of 2010 in E.P.No.38 of 2007 in O.S.No.105 of 1983 dated 03.08.2022 is set aside and EA.No.103 of 2010 is restored, on condition that the petitioners deposits a sum of Rs.10,000/- (Rupees ten thousand only) before the Trial Court within a period of two weeks from the date of receipt of a copy of this order. On such deposit being made, the Executing Court shall take steps to number all the other pending applications and ensure that EA.No.103 of 2010 is disposed of as expeditiously as possible preferably within a period of 3

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months from the date of numbering the last of the pending applications. The amount of Rs.10,000/- that would be deposited by the petitioners, shall be disbursed by the Trial Court to respondents 1 to 5, in equal proportion, i.e Rs.2,000/- each. It is made clear that the petitioners shall cooperate for the speedy disposal of EA.No.103 of 2010. Consequently, the connected Miscellaneous Petition is closed.

01.10.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
Speaking order / Non-speaking order

To:-
The District Munsif Court, at Chengalpattu.

A.D.JAGADISH CHANDIRA, J.

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