



C.R.P. No.577 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2024

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

**C.R.P.No.577 of 2022**  
**and CMP.No.3040 of 2022**

1.Neela  
2.Vijayalakshmi  
3.Subramani  
4.Pachammal  
5.Azhagammal  
8

... Petitioners/defendants 4 to

Vs.

R.Chandrasekar

... Respondent/plaintiff

**PRAYER:** Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 28.06.2021 passed in I.A.No.01/2021 in O.S.No.10/2002 on the file of the Additional Special Judge, Krishnagiri.

For Petitioners : Mr.G.Babu

For Respondent : No appearance

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## **ORDER**

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This Civil Revision Petition has been filed against the order made in I.A.No.01/2021 in O.S.No.10/2002, on the file of the Additional Special Judge, Krishnagiri, whereby, the condone delay petition filed by the defendants 4 to 8 to restore the suit was dismissed.

2. The revision petitioners are petitioners in I.A.No.1/2021 /defendants 4 to 8 in the suit. The respondent is the plaintiff. The suit is filed by the respondent/plaintiff for partition and other reliefs. The said Suit was decreed exparte on 22.06.2009. The plaintiffs filed the petition for passing of final decree in I.A.No.239 of 2017. In pursuant to the preliminary decree, the Court Commissioner visited the Suit Property for the purpose of measuring the metes and bounds in respect of partition.

3. According to the revision petitioners/defendants 4 to 8, the defendants 4 to 8 came to know about the passing of preliminary decree only when the Court Commissioner visited the property. Immediately thereafter, they filed a petition to set aside the exparte decree along with a

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petition to condone the delay of 4153 days. The delay of 4153 days was not condoned and the learned Judge, dismissed the petition to set aside the exparte decree. Challenging the same, the present Civil Revision Petition is filed by the defendants 4 to 8/petitioners.

4. The learned counsel appearing for the petitioners submitted that the delay of 4153 days in filing application to set aside the exparte order, is neither wilful nor wanton. The counsel appearing for defendants 4 to 8/revision petitioners did not appear before the trial court and therefore, exparte order was passed in the suit. The defendants 4 to 8/petitioners would contend that they have not been informed by their advocate about the exparte order. Subsequently, when they came to know about the exparte order, they filed petition to condone the delay to set aside the exparte order and therefore, the petitioners cannot be made to suffer for the error committed by the advocate.

5. Though notice has been served on the sole respondent, there is no representation on behalf of the respondent/plaintiff.

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6. A perusal of the order impugned in this Revision Petition would go to show that the learned Judge dismissed the petition filed u/s.5 of Limitation Act. The learned Judge pointed out that the delay is 4153 days for filing application to set aside the exparte order, which is almost more than four years; it is for the petitioners to be vigilant and contact the advocate to know the status of the case. The learned Judge further observed that the reasons stated in the petition are not satisfactory and dismissed the petition.

7. In my considered view, though the petitioners claimed that the delay was only due to the act of the Advocate who were not present during the proceedings of the court and further not informed about the exparte order, it is equally the responsibility of the petitioners/defendants 4 to 8 to enquire about the status of the matter. The delay of 4153 days is very enormous and therefore, the learned Judge dismissed the condone delay petition which does not warrant any interference of this Court.

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8. Accordingly, this Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

**20.03.2024**

sk/nvsri

To  
The Additional Special Judge, Krishnagiri.



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**J.NISHA BANU,J.**

Sk/nvsri

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