



WEB COPY

C.R.P.No.3018 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.3018 of 2021 and
C.M.P.No.21415 of 2021

C.Natraj

... Petitioner

Vs.

1.Ponnathal
2.Palanisamy Gounder
3.Subramani
4.The Branch Managerial
State Bank of India,
Kangeyam Branch,
Kangeyam Taluk,
Tiruppur.

...Respondents

PRAYER: Civil Revision Petition filed Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 18.03.2021 made in I.A.No.416 of 2018 in A.S.C.F.R.No.6619 of 2018 on the file of the Principal District Judge, Tiruppur.

For Petitioner

: M/s.Prabhakar
for M/s.V.Ramesh

For respondent 1

:Not ready in notice

For respondents 2 & 3

: M/s.K.Kathiresan



WEB COPY

C.R.P.No.3018 of 2011



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 384 days in filing appeal.

2. In the affidavit filed in support of the condone delay petition, it was stated by the petitioner that 1st respondent herein filed a suit for partition against 2nd and 3rd respondents in O.S.No.108 of 2011 on the file of Sub-Court, Dharapuram and she got a decree for partition. It was further stated by the petitioner that 2nd respondent and his mother Periyammal were brother and sisters and his mother Periyammal filed a suit in O.S.No.33 of 2013 on the file of Sub-Court, Dharapuram against the respondents and the present suit property in O.S.No.108 of 2011 was also included as subject matter in the suit filed by petitioner's mother. It is also stated by the petitioner that his mother died on 09.11.2014. Therefore, the suit for partition filed by her in O.S.No.33 of 2013 was dismissed as abated and the petitioner filed an application to restore the said suit and the same was pending. The petitioner acquired



knowledge about the present suit filed by the 1st respondent against 2nd and 3rd respondents when he contacted his counsel and immediately, he has taken steps to file an appeal as a third party with the delay of 384 days.

3. The petitioner's application for condonation of delay was not opposed by the respondents before the First Appellate Court. In fact, in spite of service of notice, the respondents failed to appear and oppose the application. However, the First Appellate Court dismissed the application on the ground that petitioner has not given date of knowledge of decree passed in the present suit.

4. Having regard to the reason assigned by the petitioner that earlier the connected suit was conducted by his mother and due to her death, the said suit was dismissed as abated and when he contacted his counsel, he acquired knowledge about the present suit, this Court is inclined to take a liberal view of the matter and feels it is appropriate to give an opportunity to the petitioner to get adjudication of his appeal on merits.



C.R.P.No.3018 of 2024

5. Even before this Court, though respondents are served, the respondents 1 and 4 failed to appear and respondents 2 and 3 are represented by counsel Mr.K.Kathiresan and he has no serious objection. In such circumstances, the impugned order passed by the First Appellate Court is set aside and the Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed. No costs.

28.02.2024

Index : Yes / No
Internet : Yes / No
nr

To

The learned Principal District Judge, Tiruppur.



WEB COPY



C.R.P.No.3018 of 2021

S.SOUNTHAR , J.

nr

CRP.No.3018 of 2021
and
C.M.P.No.21415 of 2021

28.02.2024