



C.R.P.(PD)No.4483 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **11.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4483 of 2024
and CMP No.25023 of 2024

Loganathan

Petitioner

Vs

Kumar

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order passed in I.A.No.1 of 2023 in O.S.No.279 of 2020 dated 18.08.2023 on the file of Sub Court, Chengam.

For Petitioners : Mr.A.Srinivasam

ORDER

The civil revision petitioner challenges the order passed by the learned Subordinate Judge, Chengam at Tiruvannamalai in I.A.No.1 of 2023 in O.S.No.279 of 2020 dated 18.08.2023.



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2. O.S.No.279 of 2020 is a suit for partition and separate possession. The relationship between the parties is not in dispute. The plaintiff is the elder brother and the defendant is the younger sibling. Claiming an equal share, he presented the aforesaid suit.

3. The defendant was served with summons and did not file his written statement in time. Therefore, he was set *exparte* and an *exparte* decree was passed on 27.10.2022. Thereafter, the plaintiff took out an application for final decree of the proceedings. An Advocate Commissioner visited the property on 06.05.2023. Immediately on reopening of the Court, the sole defendant filed an application to set aside the *exparte* decree on 02.06.2023. In the mean time, as the period of thirty days as required under Limitation Act has passed by, he filed a application under Section 5 of Limitation Act and sought for condoning the delay of 188 days in filing the petition to set aside the *exparte* decree.

4. The plea of the defendant is that, in order to eke out his living, he had gone to Vijayawada in Andhra Pradesh and therefore, could not instruct his counsel to file his written statement. He further pleaded that the property has



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already been partitioned by way of a registered document on 11.03.1994.

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5. This application was numbered as I.A.No.1 of 2023. A Counter was received from the civil revision petitioner/plaintiff. The learned Judge proceeded to allow the application on imposition of costs of Rs.8,000/-. Aggrieved by the said order, the plaintiff is on revision.

6. Heard Mr.A.Srinivasan in support of the revision petitioner.

7. Mr.A. Srinivasan pleads that the averment of the defendant is a false one. He sought to rely upon an Encumbrance Certificate issued by the Sub Registrar in order to show that the defendant was very much available within the jurisdiction of the Court during the time he is said to have been in Vijayawada in Andhra Pradesh. Pleading that the defendant has uttered a falsehood and therefore, he is not entitled to get the benefit of condonation of the delay, he seeks for the impugned order to be revised.

8. I have carefully considered the submissions of A.Srinivasan and gone through the records.



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9. A perusal of the impugned order shows that the Encumbrance Certificate, which is sought to be relied upon by the plaintiff, was never produced before the Trial Court. Therefore, I am not inclined to look into the documents as it had not been brought to the notice of the learned Trial Judge. Apart from this fact, the suit is one for partition and the defendant has already filed his written statement along with the application for condonation of delay. Further, the order was passed on 18.08.2023 and the revision itself came to be filed on 29.10.2024. The proceedings were obviously gone on in the interregnum. In any event, the learned Trial Judge has exercised his jurisdiction to condone the delay. This Court seldom interferes with such an order.

10. In C. *Balakrishnan vs M.Krishnamurthy* 1998 7 SCC 123 the Supreme Court has held that condonation of delay is a matter of discretion of the Court and that such discretion can be exercised only if delay is within a certain limit. Further, it held unless and until the discretion suffers from arbitrariness, it should not be interfered with.

11. The defendant having filed his written statement and since the



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learned Judge has been convinced with the reasons given therein, I am not inclined to interfere with the order of the learned Trial Judge.

12. The learned Subordinate Judge, Chengam, in case, he has not allowed the application under Order IX Rule 13 of Civil Procedure Code, is directed to take it up and allow the same and expedite the suit in all stages.

13. With the above direction, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.11.2024

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

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To

The Subordinate Judge, Chengam, Tiruvannamalai.



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V. LAKSHMINARAYANAN,J.

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