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CMP.No.25079 of 2024 &  
CRP.[NPD] No.2913 of 2018

**THE HIGH COURT OF JUDICATURE AT MADRAS**

**Date : 12.11.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR**

**CMP.No.25079 of 2024**

**&**

**CRP.[NPD] No.2913 of 2018**

S.Joseph [Died]

1. J.A.Anbu Rose

2. Prathibaa

3. Charline

. . . Petitioners

**Versus**

K.S.Madhana Gopalan [Died]

K.S.Srinivasan [Died]

1. M.Nagarajan

2. M.Krishnamoorthi

3. M.Mahalingam

4. M.Lakshmi

5. S.Padmavathi

6. S.Balasubramaniam

7. S.Prasanna Venkatasan

8. S.Suriya Narayanan

Karuppathal [Died]

N.Kuppusamy Gounder [Died]

Chellammal [Died]



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9. K.Rathinasamy  
10. Kalamani  
11. Eswari @ Mageswari  
12. M.Sivakumar  
13. M.Sumathi

. . . Respondents

**PRAYER :** Petition filed under section 5 of Limitation Act to condone the delay 606 days in filing the petition to set aside the Order of dismissal for default dated 08.02.2023 in CRP.No.2913 of 2018.

For petitioner : Mr.S.Jeremiah

For Respondents : Ms.K.Indupriya – R4, 5, 7

### **ORDER**

This petition has been filed to condone the delay of 606 days in filing a petition to set aside the Order of dismissal for default dated 08.02.2023 in CRP.No.2913 of 2018.

2. Originally the Civil Revision Petition has been filed against the Order rejecting the application in E.A.No.405 of 2017 filed by the revision petitioner for obstruction of delivery of possession claiming that the revision petitioner has



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purchased the property during the pendency of the suit. That application has been dismissed for default. An application in E.A.No347 of has been filed to restore the said application and the said application has also been dismissed by the Executing Court. Challenging the said dismissal, the present Civil Revision Petition has been filed. The said Civil Revision Petition has also been dismissed for default on 08.02.2023 as against the respondents R1 to R3 and R13. To restore the said Civil Revision Petition, the present petition has been filed to condone the delay of 606 days. The reason assigned to condone the delay of 606 days is that the delay is neither willful nor wanton, but due to over sight and pressure of work on the part of the counsel in paying batta. Therefore, sought to restore the Civil Revision Petition.

3. At the out set, a perusal of the records reveals that the Civil Revision Petition has been dismissed for default for non payment of batta as against the respondents R1 to R3 and R13. Even after dismissal, sleeping over for more than 606 days, one cannot contend that non payment of batta was due to work pressure of the counsel. The very conduct of the parties coming before the Court with huge delay exhibit their attitude is only to drag on the execution proceedings.



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4. A perusal of records further reveals that the revision petitioners claim right over the property on the basis of the purchase of the property by the husband of the first petitioner, during the pendency of the suit in O.S.No.283 of 1996. The suit has been decreed in favour of the plaintiff. Therefore, any sale during the pendency of the suit is always subject to the result of the suit. As the suit has already been decided in favour of the plaintiff, the sale in favour of the revision petitioner is hit by doctrine of lis pendens.

5. It is further to be noted that as far as the obstruction petition by the transferee pendente lite is concerned, the same is totally barred as per Order XXI Rule 102 of Code of Civil Procedure. In such view of the matter, as a matter of right, the petitioners cannot maintain an obstruction petition. That apart, the reason assigned to condone the delay of 606 days is not convincing and hence, this petition deserves to be dismissed. As the petitioners claim right from pendente lite purchaser, they cannot maintain an obstruction petition in a Execution proceedings, as the rights of the parties has already been decided in the suit and execution proceedings has already been initiated and the same is pending.



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Hence, the Civil Revision Petition itself is not maintainable and the same is liable to be dismissed.

6. Accordingly, this Civil Miscellaneous Petition is dismissed.

Consequently, the Civil Revision Petition is also dismissed.

**12.11.2024**

Index : Yes / No

Internet: Yes

Speaking/non speaking order

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**Note : Issue Order copy today [14.11.2024]**



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**N. SATHISH KUMAR, J.**

VTC

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