



*C.R.P.No.3737 of 2024*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 04.12.2024**

CORAM

**THE HON'BLE JUSTICE N.SATHISH KUMAR**

**C.R.P.(NPD) No.3737 of 2024**  
**and C.M.P.No.20331 of 2024**

Kuppusamy (Died)

2. Sivasundari
3. Tamil Selvi
4. Pazhaniammal
5. Sathish Kumar
6. Sandiya
7. Sabiya

... Petitioners/Petitioners/Defendants

-vs-

Indira Gandhi

... Respondent/Respondent/Plaintiff

***(P2 to P7 brought on record as LRs by an order dated 04.09.2024)***

**Prayer:** Civil Revision Petition filed under Section 115 of CPC to set aside the order and decretal order in I.A.No.1362 of 2014 in O.S.No.241 of 2006 dated 15.04.2015 on the file of I Additional District Munsif Court, Ulundurpet.

For Petitioners : Mr.R.Rajarajan

For Respondent : Mr.S.Gunaseelan

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## **ORDER**

A challenge has been made to the impugned order dated 15.04.2015 passed in I.A.No.1362 of 2014 in O.S.No.241 of 2006 by the I Additional District Munsif, Ulundurpet, by which the application filed to condone the delay of 734 days was dismissed.

2. It was the case of the petitioner / defendant in the suit in the written statement that Item Nos.3 to 7 and 11 were settled in his favour in the suit by his grandmother and Item Nos.1, 8 and 10 were bequeathed by his father by a registered will. Further, when the suit was posted for cross examination on 12.03.2012, the defendant, namely, Kuppusamy, being a Watchman suffered fracture on both legs and was bedridden and therefore, he could not appear before the Court. It was further case of the petitioner that pursuant to his non-appearance, the suit was decreed *ex parte* on 09.10.2012 and on coming to know of the *ex parte* decree, the petitioner/defendant had filed an application in I.A.No.1362 of 2014 to condone the delay of 734 days to set aside the *ex parte* decree on the ground



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of sustenance of fracture and that the *ex parte* decree has been passed without discussing any factual aspects.

3. The application was opposed by the respondent before the Trial Court, contending that the matter stood adjourned for several hearings, namely, 12 times for cross examination of P.W.1 and the petitioner / defendant did not cross examine P.W.1, which resulted in passing an *ex parte* decree and a final decree had also been passed as early as on 30.07.2014 and the defendant also contested the case during cross examination of the respondent therein. The Court below, considering the huge delay, which had not been properly explained, rightly dismissed the application.

4. Learned counsel for the revision petitioners submitted that the respondent, who is none other than the sister of the defendant in the suit, has been residing in the very next door and she was aware of the fact that the petitioner/defendant suffered fracture. The application to condone the delay was opposed only to take undue advantage to unsettle the registered



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documents. He also placed before this Court copies of registered settlement deed and Will executed in favour of the defendant, vide which certain items of the properties have been settled in favour of the defendant. He further submitted that though medical records have not been produced by the defendant, liberal approach may be given to establish the substantial justice.

5. Learned counsel for the respondent vehemently contended that the delay had not been properly explained and even in the final decree proceedings, the petitioner contested and thereafter, as an afterthought, the application had been filed, which is liable to be dismissed.

6. I have perused the material documents available on record.

7. Insofar as condonation of delay is concerned, it is a well settled law that if the party has shown sufficient cause for non prosecuting the case before the Court of Law, irrespective of the length of the delay, the Court can lean in favour of the party for advancement of the substantial justice, as otherwise, no leniency can be shown to the party merely for the



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sake of condoning the delay in the guise of extending liberal approach, even if the delay is very meagre. Secondly, while considering the application to set aside the ex parte order or to condone the delay, the Court must take into account of the overall conduct of the parties to the *lis* and the nature of the *lis*.

8. In the case on hand, though the reason assigned in the affidavit is not convincing, as each day delay has not been properly explained, taking note of the facts that sister had filed the suit against her brother; that both are residing in the same locality and that the factum of the defendant's fracture would be known to the respondent, it is evident that on account of inevitable circumstances, namely, fracture, the petitioner did not appear before the Court. Moreover, certain registered documents had been executed in favour of the petitioner / defendant and thus, in order to give an opportunity to the revision petitioners to establish the substantive rights based on the registered documents, this Court is inclined to grant a liberal approach to the delay and extend the benefit to the revision petitioners by condoning the delay, bearing in mind the proposition laid down by the



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Hon'ble Apex Court in the case of **Robin Thapa vs. Rohit Dora** reported in

**WEB COPY (2019) 7 SCC 359** that a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

9. For the foregoing discussions and observations, this Civil Revision Petition is allowed and the delay is condoned on payment of costs of Rs.25,000/-. The order dated 15.04.2015 passed in I.A.No.1362 of 2014 in O.S.No.241 of 2006 by the I Additional District Munsif, Ulundurpet is hereby quashed. The costs shall be directly paid to the respondent within one month from today and in the event of refusal by the respondent to receive the costs, the same shall deposited before the Trial Court and on such deposit, the Trial Court shall permit the respondent to withdraw the same. Considering the fact that the application had been filed under Order 9 Rule 13 of CPC, the Trial Court shall take into account the nature of the suit and documents in favour of the revision petitioners and thereafter proceed with the suit and dispose of the same on its own merits within a period of



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four months from the date of receipt of a copy of this order. Consequently,

connected Miscellaneous Petition is closed.

**04.12.2024**

Index: Yes/No

Internet: Yes/No

Speaking Order/Non Speaking Order

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**To:**

I Additional District Munsif,  
Ulundurpet



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**N.SATHISH KUMAR,J.,**  
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