



C.R.P.(MD)No.1083 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 24.01.2024

PRONOUNCED ON: 22 .03.2024

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

**C.R.P.(MD)No.1083 of 2018**

- 1.C.Alagammal
- 2.C.Gurusamy
- 3.C.Malar
- 4.C.Barathiar
- 5.T.Shanthi (died)
- 6.A.Chandra
- 7.N.Vellaisamy
- 8.Vellaiyan Poojari
- 9.Thavamani
- 10.T.Dineshkumar
- 11.T.Vimala Devi
- 12.T.Vijay

: Petitioners/Petitioners/  
Plaintiffs

(The Revision Petitioners 9 to 12  
are the legal heirs of the deceased  
5<sup>th</sup> petitioner)  
(cause title accepted vide Court order  
dated 23.04.2018 made in C.M.P.(MD)  
No.3718 of 2018 in C.R.P.(MD)SR  
No.7397 of 2018)

Vs.



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1.The State of Tamil Nadu,  
represented by its District Collector,  
Collector Office Complex,  
Dindigul District,  
Dindigul.

2.The District Forest Officer,  
Dindigul District, Velunachiar Campus,  
Dindigul District Collector Office,  
Dindigul : Respondents/Respondents/  
Defendants

**PRAYER:-** Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the order made in I.A.No.154 of 2016 in O.S.No.1017 of 1992, on the file of the District Munsif cum Judicial Magistrate, Natham, dated 04.01.2018.

For Petitioners : Mr.R.Murugan

For Respondents : Mr.J.Ashok  
Additional Government Pleader

### **ORDER**

The Civil Revision Petition is directed against the order passed in I.A.No.154 of 2016 in O.S.No.1017 of 1992, dated 04.01.2018, on the file of the District Munsif cum Judicial Magistrate, Natham, dismissing



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the petition filed under Section 5 of the Limitation Act, to condone the delay of 7051 days in filing the application to restore the suit which was dismissed for default on 15.11.1996.

2. One Chandran Poosari and two others for themselves and on behalf of Thooti Poosari Community in Kattuvlampatty Village have filed the suit in O.S.No.1017 of 1992, on the file of the District Munsif Court, Natham against the respondents to declare that the suit property was belonging to them and was in their possession ancestrally and for permanent injunction restraining the defendants and their men from in any manner interfering with or trespassing into the suit property. The respondents have filed their written statement and were contesting the suit. Since the suit was dismissed for default on 15.11.1996, the revision petitioners 1 to 8 have filed the above application under Section 5 of the Limitation Act in I.A.No.154 of 2016, to condone the delay of 7046 days in filing the application to restore the suit under Order 9 Rule 9 C.P.C., which was dismissed for default on 15.11.1996. The respondents have filed a counter affidavit raising serious objections.



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3. During enquiry, the petitioners have examined the first petitioner – Alagammal as P.W.1 and one witness Mani as P.W.2 and exhibited four documents as Exs.P.1 to P.4. The respondents have adduced neither oral nor documentary evidence. The learned District Munsif, considering the pleadings of both sides, evidence adduced and the materials available on record and on hearing the arguments of both sides, has passed the impugned order dated 04.01.2018, dismissing the said petition. Aggrieved by the order of dismissal, the petitioners in I.A.NO.154 of 2016 and the legal representatives of the deceased petitioner have filed the present revision.

4. The case of the petitioners in the affidavit filed in support of the petition filed under Section 5 of the Limitation Act is that on 24.06.1994, an exparte decree was passed in favour of the plaintiffs, that the respondents have then filed an application for setting aside the exparte decree in I.A.No.1070 of 1994, but no notice was served on the plaintiffs, that the deceased – first plaintiff has shifted his residence to Cheminipatti Village and he was bedridden, that since the deceased first plaintiff was conducting the main suit for himself and for the plaintiffs 2 and 3, the plaintiffs 2 and 3 have no direct knowledge about the day to day



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proceedings, that the plaintiffs 1 to 3 were illiterates and their Counsel have also not informed about the position of the case, that the first plaintiff died on 29.05.1997 leaving behind the petitioners 1 to 6 to succeed the deceased estate, that they came to know in the second week of February 2016 from their relation P.Mani that their suit was dismissed on 15.11.1996, the said Mani came to know about the dismissal of their suit through the order passed by the District Revenue Officer, Dindigul dated 09.01.2015, that the petitioners were unable to meet their Counsel and hence, they sought the help of other Advocates to trace the records, that the case bundle was not available in the Natham Court, but traced out in the Dindigul Court, that the petitioners have then appointed the present Counsel to file the above application along with restoration petition, that the non-filing of the restoration petition within the time is neither wilful nor wanton, but beyond their control, that there occurred a delay of 7051 days in filing the restoration application and that the petitioners will be put to irreparable loss and hardship, if the delay is not condoned.

5. The respondents have filed an elaborate counter affidavit raising serious objections., that the plaintiffs' contention that they came to know



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about the dismissal of the suit in the month of February 2016 after the lapse of 20 years is utter false story and cannot be accepted, that the plaintiffs by initiating the litigation must be cautious and aware about the proceedings, that the petitioners have not assigned any valid or acceptable reason for the delay occurred, that they have only given vague and unacceptable reason and that too without any evidence, that the petitioners have taken several contradictory stands and in one place they blamed their Counsel and in another place, they have stated that they are illiterates, in another place stated that they knew about the dismissal only in the month of February 2016, that though the first plaintiff was bedridden, any other plaintiffs could have conducted the case and that therefore, the petition is liable to be dismissed.

6. At the outset, as rightly pointed out by the learned trial Judge, though the suit was filed in a representative capacity, the application to condone the delay filed under Section 5 of the Limitation Act in I.A.No. 154 of 2016 was filed by 8 persons in their individual capacity and also the present revision by the revision petitioners in their individual capacity and not in a representative capacity. Admittedly, the suit was dismissed for default on 15.11.1996. Though the petitioners have alleged



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that there was a delay of 7051 days, the respondents have taken a stand that there was a delay of 7041 days. The learned trial Judge, by making calculations has observed that there occurred a delay of 7046 days ie., 18 years 3 months 21 days in filing the petition for restoration of the suit.

7. The main contention of the petitioners is that since the first plaintiff was conducting the suit on behalf of other plaintiffs and since he has shifted his residence and was bedridden and that other plaintiffs were not having any knowledge about the proceedings, the suit was dismissed for default and that they came to know about the dismissal of the suit only from P.W.2 Mani in the second week of February 2016, who in turn came to know about the dismissal of the suit from the order passed by the District Revenue Officer, Dindigul dated 09.01.2015. The petitioners have produced the copies of the orders passed in the Writ Petition in W.P.Nos.8959 of 2013 and 18600 of 2014 and the memorandum issued by the Revenue Divisional Officer and the order passed by the Revenue Divisional Officer, dated 09.01.2015, as Exs.P.2 to P.4 respectively. Even according to the petitioners, Ex.P.4 order is dated 09.01.2015. But their contention is that the same was informed by P.W.2 only in February 2016. Though the petitioners have alleged that P.W.2 is their relative,



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neither the plaintiffs nor P.W.2 have given any reason or explanation as to why the dismissal of the suit shown in Ex.P.4 order was not informed to the petitioners immediately after Ex.P.4 order and for informing the same to the petitioners after more than one year.

8. Admittedly, the above petition in I.A.No.154 of 2016 has been filed on 01.07.2016. According to the petitioners, the first plaintiff died on 25.09.1997. As already pointed out, the original suit was filed in the representative capacity. But admittedly after the dismissal of the suit for default, no other person in the Thootti Poosari Community for whose benefit and interest, the suit was allegedly laid, has come forward to prosecute the suit or subsequently to restore the suit which was dismissed for default.

9. Admittedly, the revision petitioners 1 to 6 are the legal representatives of the deceased first plaintiff. As rightly observed by the learned trial Judge, the petitioners 1 to 6 in I.A.No.154 of 2016 have filed the petition under Section 5 of the Limitation Act to condone the delay in filing restoration petition directly without getting any orders for setting aside the abatement caused due to the death of the first plaintiff



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and to implead themselves as the legal representatives of the first plaintiff. As rightly observed by the learned trial Judge, the petitioners 1 to 6 in I.A.NO.154 of 2016 have no locus standi to file the above application for filing the petition for restoration of the suit or for condoning the delay in filing the restoration petition. As already pointed out, the plaintiffs 2 and 3 have also not canvassed any reason or ground for the delay occurred.

10. The next contention of the revision petitioners is that, in the application filed by the defendants in I.A.No.1070 of 1994 for setting aside the exparte decree, no notice was served on the plaintiffs and as such, they were not having knowledge about the setting aside of exparte order and the receipt of the written statement. But the learned trial Judge, considering the records, has rightly observed that the petition in I.A.No.1070 of 1994 was allowed on costs and the Counsel appearing for the plaintiffs have received the costs and only on that basis, the petition was ordered to be allowed. More importantly, after the framing of issues, Advocate Arifftheen has filed a vakalt for the plaintiffs 1 to 3 on 27.06.1996, that subsequently the suit was transferred to II Additional District Munsif Court and that when the suit was listed for trial on



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15.11.2016, the plaintiffs were called absent and as there was no representation, was ordered to be dismissed for default.

11. It is pertinent to note that the second plaintiff /7<sup>th</sup> petitioner has filed a copy application through his Advocate K.G.Ravichadran on 31.03.2000 along with no objection endorsement by the earlier Counsel on record. It is evident from the impugned order that the seventh petitioner's copy application was returned and again the same was again represented and that the seventh plaintiff has again applied for the judgment and decree through another Counsel Nagendran on 22.07.2002 and obtained the same and even at that time, his Counsel Nagendran has filed vakalat with no objection obtained from the earlier Counsel on record and that subsequently Chandran and others have filed a copy application in C.A.No.4830 on 26.07.2013 for the copies of the judgment and decree dated 15.11.1996. Considering the above, the learned trial Judge rightly observed that the petitioners were having knowledge about the dismissal of the suit at that time itself and their contention that they came to know only in February 2016 cannot be accepted.



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12. It is settled law that the word “sufficient cause” in Section 5 of Limitation Act should receive liberal construction to do substantial justice and that length of delay is no matter, but acceptability of the explanation is the only criterion. It is also settled law that delay condonation petition should not be dealt in a routine manner and mechanical approach in condonation of huge delay is unacceptable. At this juncture, it is necessary to refer the following passages in the decision reported in **2020 SCC OnLine Mad 2355 (T.Natarajan Vs. Srivari Housing and Construction Ltd. and others)**, relied on by the learned counsel appearing for the revision petitioner,

*“4.The law of limitation is substantive law. Condonation of delay is an exception. The Courts are bound to exercise discretionary power judiciously and by recording reasons. The Courts are bound to follow the law of limitation in all circumstances and only on exceptional circumstances, wherever the reasons are found genuine, then only the Courts can condone the delay and not otherwise. Mechanical approach in condonation of huge delay is unacceptable. In such an event, the Courts are diluting the law of limitation, which is impermissible. The power of discretion is to be*



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*exercised by recording reasons and it is not as if the Courts can condone the huge delay without any genuine reasons.*

....

7. ....

*16. The concepts such as “liberal approach”, “justice oriented approach”, “substantial justice” cannot be employed in jettison the substantial law of limitation. The law of limitation is substantial and therefore the principles laid down is to be scrupulously followed while condoning the delay under the law of limitation. The limitation has got a specific purpose and object and more specifically to avoid prejudice to the respective parties. In the event of prolongation or protraction of the litigation, undoubtedly and for an unspecified period when the specific law of limitation has got a specific purpose and object, then the power of discretion is to be exercised cautiously. Power of discretion cannot be exercised in the absence of any valid reason. In other words, powers can be exercised for the purpose of passing orders only by recording reasons which must be candid and convincing and must be passed on certain sound legal principles. Therefore, recording of reasons for exercising discretionary powers is one of the elementary principles of law. In the event of exercising discretionary powers without recording reasons, undoubtedly the same would cause not only prejudice and will set a bad principle*



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*and therefore, the Courts must be cautious while exercising power of discretion more specifically in such matters where the law of Limitation is substantial.”*

13. In the case on hand, the petitioners have sought to condone the delay of 7046 days which is clearly inordinate. As already pointed out, they have not assigned any acceptable reason or cause for the inordinate delay occurred and they have also not chosen to prove the cause shown by them. The learned Judge has elaborately dealt with all the aspects and rightly dismissed the petition. Hence, this Court is not inclined to interfere with the impugned order. Consequently, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

14. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

**22.03.2024**

NCC : Yes : No  
Index : Yes : No  
Internet : Yes : No  
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To

1. The District Munsif cum Judicial Magistrate Court, Natham
2. The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.MURALI SHANKAR,J.**

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PRE-DELIVERY JUDGMENT MADE IN

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