



C.R.P.(MD)No.304 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 27/03/2024

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The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P(MD)No.304 of 2024

Mani : Petitioner/Petitioner/
Plaintiff
Vs.
1.Senthilkumar
2.Muthukrishnan
3.Amirthammal : Respondents/Defendants

PRAYER:-Civil Revision Petition has been filed under section 115 of the Civil Procedure Code, to set aside the fair and decreetal order in IA No.1 of 2021 in OS No.38 of 2009, dated 15/11/2022 on the file of the District Munsif-cum-Judicial Magistrate, Singampunari.

For Petitioner : Mrs.A.Banumathy

For Respondents : M/s.R.Alagia Nambi

O R D E R

This civil revision is filed seeking in order to set aside the fair and decreetal order, dated 15/11/2022 passed in IA No.1 of 2021 in OS No.38 of 2009 by the District Munsif-cum-Judicial Magistrate, Singampunari.



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2. The facts in brief:-

Suit in OS No.38 of 2009 was filed by the petitioner herein as plaintiff seeking the relief of declaration that the portion marked as 'ABCD' in the rough sketch belongs to him absolutely and for recovery of possession of that portion by removing the superstructure made by him in the portion marked as 'PQRS'. The defendants remained *ex-parte*, even though filed the written statement, on 13/03/2019. To set aside the *ex-parte* order, they filed petition under section 5 of the Limitation Act to condone the delay of 1471 days. That came to be dismissed by the trial court.

3. Against which, this civil revision petition is preferred.

4. The contents of the affidavit filed in support of the petition in IA No.1 of 2021 is as follows:-

To prove that the respondents have made encroachment in the property, it must be measured with the help of the Land Surveyor. So, he filed IA No.432 of 2013 seeking appointment of Commissioner to measure the property with reference to the settlement patta, revenue records. Even though that petition was allowed, in spite of his best



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efforts, he could not procure the certified copies of the revenue records. So, the petition was dismissed granting liberty to revive the application after obtaining the certified copies. Unless the properties measured by the Commissioner, no purpose will be served to prosecute the case. He failed to appear, on 17/07/2016. He received the documents in December-2017. So, he approached his Advocate and hand over the documents. But the Advocate misplaced those documents in the office. It could be traced out only, on 28/03/2020. Later, corona pandemic struck down the entire nation. So, there is a delay of 1471 days in filing the petition to restore the suit.

5.That was resisted by the respondents stating that no proper reasons are assigned. More-over, they constructed a compound wall within their boundary line. To harass them, only, this petition has been filed. The trial court found that the reason assigned by the petitioner is not properly explained. In a cryptic order, that came to be dismissed by the trial court.

6.Heard both sides.

7.The petitioner reiterated the averments made in



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the plaint. He would submit that because of the delay in procuring the revenue records only, he was not in a position to prosecute the matter. The delay occurred only for that reason.

8. But it appears that this reason is not a *bona-fide* one. Absolutely, there is no necessity for obtaining the certified copy of the revenue records for the purpose of measuring the properties by the Commissioner. As per the order of this court, those documents if applied prior, the petitioner would have produced the same at the time of measuring the property by the Commissioner. Without taking proper course, now it has been stated that there is a delay in obtaining the certified copy of the revenue records. More-over, the reason assigned by the petitioner that those documents got mingled with other documents is also without any evidence. Lapse on the part of the petitioner and laches committed by him in making communication with his Advocate shows that he was not genuine in prosecuting the matter. The litigation cannot be kept pending for years, because of the laches committed by a party. The reasons assigned by the petitioner does not satisfy the requirement of law.



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9.Consideration for considering this sort of petition is now more or less well settled. In Esha Battacharjee's case, the following principles have been dedicated.

"15.From the aforesaid authorities the principles that can broadly be culled out are:

(i)There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii)The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii)Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv)No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.



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(v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

(vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

(vii) *The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

(viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

(ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be*



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given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

(a) An application for condonation of delay should be drafted with careful



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concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b)An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c)Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d)The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."

10.by considering the condone delay application under section 5 of the Limitation Act, the law is more or less well settled. But in the present case, I find that no ground has been made out by the petitioner.



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11 the result, these civil revision petitions stand

dismissed. No costs.

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Index:Yes/No
Internet:Yes/No
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To,

- 1.The District Munsif-cum-Judicial Magistrate,
Singampunari.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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