



*C.R.P.(MD)No.1084 of 2021 and  
C.M.A.(MD)No.284 of 2020*

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 15.03.2024

Pronounced on : 30.04.2024

CORAM:

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

C.R.P.(MD)No.1084 of 2021  
and C.M.P.(MD)No.6276 of 2021  
and  
C.M.A.(MD)No.284 of 2020

Uchimaliammal

...Petitioner in both  
the petitions

Vs.

1. B.Ramesh

2. Rajammal

...Respondents in  
both the petitions

**Prayer in C.R.P.(MD)No.1084 of 2021** : This Civil Revision Petition filed under Section 115 C.P.C., to call for the records pertaining I.A.No. 132 of 2016 in O.S.No.32 of 2014 dated 11.08.2017 on the file of the Additional District Court,Thirunelveli and set aside the same and thereby allow the Civil Revision Petition.

**Prayer in C.M.A.(MD)No.284 of 2020** : This Civil Miscellaneous Appeal filed under Order 43 Rule 1(C) C.P.C., to set aside the order dated



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11.08.2017 passed in I.A.No.148 of 2016 passed in O.S.No.32 of 2014 on the file of the IV Additional District Court, Thirunelveli.

(in both the petitions)

For Petitioner/  
appellant : Mr.K.Rajeshwaran

For Respondents : Mr.H.Arumugam

### **COMMON ORDER**

The revision in C.R.P.(MD)No.1084 of 2021 is directed against the order passed in I.A.No.132 of 2016 in O.S.No.32 of 2014 dated 11.08.2017 on the file of the IV Additional District Court, Tirunelveli, dismissing the application filed under Section 5 of Limitation Act.

2. The appeal in C.M.A.(MD)No.284 of 2020 is directed against the order passed in I.A.No.148 of 2016 in O.S.No.32 of 2014 dated 11.08.2017 on the file of the IV Additional District Court, Tirunelveli, dismissing the application filed under Order 9 Rule 13 C.P.C.

3. Since the orders impugned in the revision as well as in the appeal are connected with each other, this Court decides to pass common order.



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4. The revision petitioner-appellant is the first defendant and the respondents-respondents are the plaintiffs. For the sake of convenience and brevity, the parties herein will be referred to as per their status/ranking in the trial Court.

5. The plaintiffs have filed the suit in O.S.No.32 of 2014 claiming declaration that the suit property belongs to the plaintiffs and for recovery of possession of the same and for mandatory injunction directing the first defendant to hand over the title deeds of the suit property to the plaintiffs and directing the first defendant to pay past and future mean profits. Though the suit came to be filed against 10 persons including the first defendant, subsequently the defendants 2 to 10 claiming to be the tenants were exonerated in the trial Court itself. Since the first defendant, after receipt of suit summons, has not entered into appearance, she was called absent and set *ex parte* on 04.06.2014 and subsequently an *ex parte* judgment and decree came to be passed on 14.11.2014. Thereafter, the first defendant has filed the application in I.A.No.148 of 2016 under Order 9 Rule 13 for setting aside the *ex parte* decree along with the application in I.A.No.132 of 2016 under Section 5 of Limitation Act to condone the



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delay of 541 days in filing the application for setting aside the *ex parte* decree. The plaintiffs have filed counter statement raising objections. The learned trial Judge, after enquiry, has passed an order dated 11.08.2017 dismissing the application filed under Section 5 of Limitation Act and also passed a consequential order in the application filed under Order 9 Rule 13 C.P.C. dated 11.08.2017 dismissing the same. Aggrieved by the orders of dismissal, the first defendant has preferred the present revision and the appeal.

6. The case of the first defendant, in the affidavit filed in support of the above applications, is that the first defendant has received notice in the execution petition in E.P.No.10 of 2016 on 22.05.2016 directing her to appear before the Court on 07.06.2016, that since the first defendant was illiterate, she has shown the notice to her relatives, who directed her to contact an advocate immediately, that when the first defendant had approached a counsel, she was informed that an *ex parte* decree was passed on 14.11.2014 and execution petition was laid for executing the said decree, that though the first defendant came to know about the decree subsequently, she could not file any application for setting aside the *ex*



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*parte* decree within the stipulated time and occurred a delay of 541 days in filing the application for setting aside the *ex parte* decree, that the delay is neither willful nor wanton, that the plaintiffs would not suffer any loss or hardship, if the applications are allowed and that the first defendant will be put to irreparable loss and hardship, if the applications are dismissed.

7. In the affidavit filed in support of the application filed under Order 9 Rule 13 C.P.C., the first defendant has further stated that her husband died in the year 2007, that she had no issues, that her husband has executed a registered Will dated 17.04.2004 bequeathing the suit property to her by accepting her as his wife and that after the death of her husband, Will came into force and she has become the owner of the suit property and is in possession and enjoyment of the same.

8. The defence of the plaintiffs is that the first defendant did not purposely respond to the suit summons and hence, she was set *ex parte*, that the first defendant having failed to respond to the summons, the explanation now offered cannot be accepted, that the contention of the first defendant that she came to know of the *ex parte* decree only on



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22.05.2016 on receipt of EP notice is absolutely false, that the delay is huge and the explanation offered is false and unacceptable, that the delay is willful and wanton with a view to drag on the proceedings and that the application is not *bona fide* and the same is liable to be dismissed.

9. In the counter filed to the application in I.A.No.148 of 2016, the plaintiffs have further stated that the first plaintiff's grandfather Ayyamperumal did not execute any Will as alleged by the first defendant and the consequent allegations are false, that the first defendant cannot ask for setting aside the *ex parte* decree on false and flimsy grounds, that the above application has been filed only to drag on the proceedings and that therefore, the application is liable to be dismissed.

10. Before entering into further, it is necessary to refer the case of the plaintiffs. The plaintiffs' case is that the suit property was originally owned by one Ayyamperumal, as the same was purchased by him through various sale deeds, that the said Ayyamperumal had a wife, by name, Ramuammal and had a son Balakrishnan, that the first plaintiff is the son and the second plaintiff is the wife of the said Balakrishnan, that the first



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plaintiff's father Balakrishnan died in the year 1983 even during the life time of his father Ayyamperumal, that the first plaintiff's father Balakrishnan lived in a separate house along with his wife and son, that the said Ayyamperumal died in the year 2007, that the first defendant is the kept concubine of the said Ayyamperumal and no valid marriage was solemnized between them, that since the first wife Ramuammal was alive till the death of her husband, the first defendant cannot claim the status of a legally wedded wife of the said Ayyamperumal, that the first defendant co-habited with the said Ayyamperumal and Ramuammal, that Ramuammal and the first defendant lived together even after the death of the said Ayyamperumal till the death of Ramuammal in the year 2010, that after the death of Ayyamperumal, Ramuammal and Balakrishnan, the plaintiffs are the only legal heirs and they are the absolute owner of the suit property, that the first defendant, who is in possession of the suit property, has been attempting to alienate the property to a third party, that the first defendant has been receiving rents from the let out premises in the suit property and that therefore, the plaintiffs were constrained to file the above suit.



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11. No doubt, as already pointed out, the only reason canvassed by the first defendant is that she was not aware of the suit proceedings earlier and that she came to know about the *ex parte* decree only after the receipt of notice in the execution petition.

12. It is the specific contention of the first defendant that she is an illiterate lady and that though she has received the EP notice on 22.05.2016, not aware of its contents has shown the same to her relatives, who in turn directed her to approach an advocate and only after meeting an advocate, she came to know about the suit proceedings and passing of the *ex parte* decree and the pendency of the execution petition.

13. The learned counsel appearing for the plaintiffs has relied on the judgment of the Hon'ble Supreme Court in ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others*** reported in (2013) 12 SCC 649, wherein, the Hon'ble Supreme Court, considering various authorities, has culled out the following principles;

“15. ...

(i) *There should be a liberal, pragmatic,*



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*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.*

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



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



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(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.”*

14. It is necessary to refer the judgment of the Hon'ble Supreme Court in the case of ***State of Bihar and others Vs. Kameshwar Prasad Singh and another*** reported in ***AIR 2000 SC 2306***, wherein, it was held



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that power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing the cases on merit and the relevant passage is extracted hereunder:

*“11. Power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in Collector, Land Acquisition, Anantnag V. Mst. Katiji (1987)ILLJ 500 SC held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life purpose for the existence of the institution of Courts. It was further observed that a liberal approach is adopted on principle as it is realised that:*

*1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*

*2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*



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3. *'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*

4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

15. In the case of ***Sheo Raj Singh (deceased) through LRs. and others Vs. Union Of India and another*** reported in ***2023 LiveLaw (SC) 865***, the Hon'ble Apex Court, after referring to the reasons assigned by the



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High Court while condoning the delay, has upheld their order by observing that the High Court has not exercised its discretion in an arbitrary manner and the said reasons are extracted hereunder:

*“a. The law of limitation was founded on public policy, and that some lapse on the part of a litigant, by itself, would not be sufficient to deny condonation of delay as the same could cause miscarriage of justice.*

*b. The expression sufficient cause is elastic enough for courts to do substantial justice. Further, when substantial justice and technical considerations are pitted against one another, the former would prevail.*

*c. It is upon the courts to consider the sufficiency of cause shown for the delay, and the length of delay is not always decisive while exercising discretion in such matters if the delay is properly explained. Further, the merits of a claim were also to be considered when deciding such applications for condonation of delay.*

*d. Further, a distinction should be drawn between inordinate unexplained delay and explained delay, where in the present case, the first respondent had sufficiently explained the delay on account of negligence on part of the*



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*government functionaries and the government counsel on record before the Reference Court.*

*e. The officer responsible for the negligence would be liable to suffer and not public interest through the State. The High Court felt inclined to take a pragmatic view since the negligence therein did not border on callousness.”*

16. The Hon'ble Supreme Court, in the decision reported in **2012 (4) SCC 154 (Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai)**, has held that the law of limitation is founded on public policy and the Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the Court for vindication of their rights without unreasonable delay.

17. In the case of **Delhi Development Authority Vs. Jagan Singh and others (Civil Appeal No.4335 of 2023 dated 13.07.2023)**, the Hon'ble Apex Court has observed as follows:

*“11. There cannot be any dispute about the proposition of law canvassed by the learned counsel appearing for the first respondent. However, there*



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*cannot be any hard and fast rule to decide whether sufficient cause exists. It all depends on the facts and circumstances of each individual case.*

*12. Over the years, this Court has repeatedly held that a liberal and justice-oriented approach needs to be adopted in the matters of condonation of delay so that the substantive rights of the parties are not defeated only on the ground of delay. The power under Section 5 of the Limitation Act, 1963 must be exercised in a very meaningful manner which will serve the ends of justice.”*

18. The Hon'ble Supreme Court has then, by observing that the application for condonation of delay has been drafted rather casually, but taking note of the peculiar facts of the case, decided to condone the delay by adopting a justice-oriented and liberal approach.

19. In the case on hand, as already pointed out, the plaintiffs have claimed ownership over the suit property by intestate succession alleging that the original owner Ayyamperumal and his son Balakrishnan had died intestate, whereas, the first defendant claiming to be the second wife of the



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said Ayyamperumal had claimed ownership by testamentary succession as she has alleged that the said Ayyamperumal while he was alive, has executed a registered Will dated 17.04.2004 vide Document No.17/2004 on the file of Vadakku Veeravanallur Sub Registrar Office bequeathing all his property in favour of his wives jointly giving life interest to his first wife Ramuammal and after her demise to the first defendant absolutely.

20. At this juncture, it is necessary to refer the decision of this Court in ***Ajay Kumar Gulecha Vs. J.Vijayakumar and another*** reported in **2015 (I) CTC 811**,

*“8. Heard Mr. R. Thiagarajan, learned counsel for the petitioner. No doubt, the delay of 1753 days is huge. Law of limitation has been enacted not for destroying the rights of the parties. In this case, the property involved is very valuable one measuring about 2.30 Acres along with a building. When rights on such a valuable property is involved in the suit, the rights of the parties should be decided on merits.”*

21. As already pointed out, the learned trial Judge, after dismissing the delay condonation application in I.A.No.132 of 2016, has dismissed



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the application filed under Order 9 Rule 13 C.P.C. for setting aside the *ex parte* decree consequently.

22. Taking note of the legal position above referred and considering the facts and circumstances of the case and also the fact that since the first defendant has claimed ownership over the suit property on the basis of the registered Will, this Court is of the view that the first defendant should be given an opportunity to contest the suit on merits, in the interest of justice. But at the same time, considering the length of delay and the consequent dismissal of her application filed under Order 9 Rule 13 C.P.C., this Court is of the further view that the first defendant must be mulcted with costs. This Court is also of the view that in case of allowing the revision and the appeal, the trial Court is to be directed to proceed with the trial and dispose of the same within a period of three months.

23. In the result, the Civil Revision Petition and the Civil Miscellaneous Appeal will be allowed on payment of cost of **Rs.10,000/- (Rupees Ten Thousand only)** to the respondents/respondents by the revision petitioner/appellant, on or before **06.06.2024**, failing which, the



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revision and the appeal shall stand dismissed automatically. Consequently,  
connected miscellaneous petition is closed.

25. Post the matter on **07.06.2024** for reporting compliance.

**30.04.2024**

NCC :yes/No  
Index :yes/No  
Internet:yes/No  
csm

**Note : Issue order copy on 29.05.2024**

To

1. The IV Additional District Judge,  
Tirunelveli.
2. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.MURALI SHANKAR,J.**

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**Pre-Delivery Order made in**  
C.R.P.(MD)No.1084 of 2021  
and C.M.P.(MD)No.6276 of 2021  
and  
C.M.A.(MD)No.284 of 2020

**Dated : 30.04.2024**