



C.R.P.No.5322 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.01.2025**

CORAM

THE HONOURABLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P. No. 5322 of 2024

and C.M.P.No.29602 of 2024

1. Zafar Ahamed

2. T.Abrar Ahamed

3. Shahin Gouzar

4. Shajitha Parveen

.... Petitioner

Vs

Riaz ahamed @ Dawood Basha

.... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India praying to set aside the order dated 22.09.2023 in I.A.No.01 of 2019 in OS No.310 of 2013 on the file of Sub-Judge, Ranipet, Vellore District.

For Petitioner : Mr.K.Sathish Kumar

ORDER

This Civil Revision Petition challenges the order passed by the learned Subordinate Judge, Ranipet, Vellore District in IA No.1 of 2019 in OS No.310 of 2013 dated 22.09.2023.

2. Civil Revision petitioners are the defendants in the suit. OS



C.R.P.No.5322 of 2024

No.310 of 2013 is a suit for partition and separate possession. The summons was served in the suit. The defendants did not file their written statement and hence, they were set *exparte*. Despite granting nearly five months time to the defendants to file a petition under Order IX Rule 7, the learned Trial Judge being left with no other option, decreed the suit and passed an *exparte* preliminary decree in the suit on 26.03.2015.

3. Thereafter, final decree application was filed and in that application too, the defendant remained *exparte*. Therefore, an *exparte* final decree was passed on 26.04.2017. Subsequently, an application for delivery of possession was filed and in the execution petition, the defendants participated. Delivery was ordered and the Ameen visited the property to hand over delivery on 01.07.2019.

4. After all these proceedings had gone by, the defendants filed an application in IA No.1 of 2019, seeking to condone the delay of 1538 days in filing the petition to set-aside the *exparte* preliminary decree. This application was numbered as I.A No.1 of 2019. Notice was issued to the plaintiff. The plaintiff filed a detailed counter. He denied the allegations that the 1st petitioner was suffering from jaundice and that resulted in the *exparte* decree. He pointed out that at all stages of the proceedings, the defendants had been served but remained *exparte*. Therefore, he sought for dismissal of



C.R.P.No.5322 of 2024

the petition. The learned Trial Judge did not believe the story of Jaundice that was given by the defendants and dismissed the petition. Hence, this Civil Revision Petition.

5. I heard Mr.K.Sathish Kumar. The learned counsel pleads as the 1st petitioner was suffering from Jaundice, the written statement could not be filed on 29.10.2014. This resulted in the *exparte* preliminary decree on 26.03.2015. He points out that sickness can be considered as "sufficient cause" for non appearance before the Court and therefore, the learned Trial Judge should have condoned the delay and set-aside the *exparte* decree.

6. I have carefully considered the submissions of the learned counsel for the petitioner.

7. I should point out that the ground on which the delay sought to be condoned is that the 1st petitioner was suffering from Jaundice. Apart from the 1st petitioner, there are three other petitioners in the proceedings. No reason has been given as to why they could not file their written statement. Furthermore, it is not in dispute that summons was served in the final decree application and even in those proceedings, they remained *exparte*.



C.R.P.No.5322 of 2024

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8. Though summons was also served in the execution petition and in those proceedings, the civil revision petitioners also had engaged a counsel, they did not take steps to file an application to set-aside the *ex parte* decree. It is also not in dispute that the Ameen, pursuant to the orders of the Court in the execution petition, came to the site for delivery of the property and handed over the property to the successful plaintiff.

9. When much water has flown under the bridge, the demand of the petitioners to condone the delay of nearly five years is, I would say "unconscionable". No Court can accept the reasons that have been trotted out by the defendants to condone the delay. I am certainly not accepting the same. I do not find any error in the impugned order. Accordingly, this Civil Revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.01.2025

Index : Yes/No

NC : Yes/No

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C.R.P.No.5322 of 2024

V.LAKSHMINARAYANAN, J.

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To

Sub-Judge, Ranipet, Vellore District.

C.R.P.No.5322 of 2024

09.01.2025