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C.R.P.No.1250 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.1250 of 2025
and C.M.P.No.7507 of 2025

1. V.Ramasamy

2. R.Rajavel

... Petitioners

Vs

S.Meena @ Nallammal

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, pleaded to call for the records in I.A.No.1 of 2023 in O.S.No.175 of 2011 on the file of the learned Subordinate Judge, Attur, order dated 12.07.2024 and set aside the same.

For Petitioner : Mr.T.Ganesan

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Subordinate Judge, Attur, on 12.07.2024 in I.A.No.1 of 2023 in



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O.S.No.175 of 2011.

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2. The brief facts of the case are as follows :-

2.1. The petitioners are the defendants in the suit filed by the respondent/plaintiff before the Subordinate Court, Attur, in O.S.No.175 of 2011 seeking for partition, permanent injunction and other reliefs. In the said suit, the petitioners/defendants were initially set ex-parte on 20.10.2014 since they failed to appear and cross examine PW1.

2.2. Thereafter, the petitioners/defendants had file an application in I.A.No.599 of 2014 along with IA.No.598 of 2014 seeking to re open the petition and the same was allowed. However, the defendants once again failed to appear before the court and cross examine PW1, thereby, they were set ex parte and a preliminary decree came to be passed on 27.11.2014.

2.3. The respondent/plaintiff had filed an application in I.A.No.495 of 2015 and even in the said final decree proceedings, the petitioners did not appear before the Court and on 28.06.2018, the final decree was passed by the trial Court in I.A.No.495 of 2015.

2.4. Thereafter, the petitioners/defendants had filed an application in



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I.A.No.1 of 2023 under Section 5 of the Limitation Act to condone the delay of

2781 days in filing the petition to set aside the *ex-parte* judgment and decree dated 27.11.2014. The respondent had also filed a counter stating that the petitioners have belatedly filed the application without any bona fide reasons and deliberately filed the petition to deny the share of the respondent/plaintiff.

2.5. The trial Court, holding that the petitioners have not shown sufficient cause for condoning the delay of 2781 days in filing an application under Order IX Rule 13 CPC and they have filed the petition only to procrastinate the proceedings, has dismissed the application vide order dated 12.07.2024. Challenging the same, the present civil revision petition has been filed.

3. The submissions of the learned counsel appearing for the petitioners are as follows :-

3.1. The respondent/plaintiff, who is respectively the daughter and sister of the petitioners/defendants had filed a suit in O.S.No.175 of 2011 before the Subordinate Court, Attur, seeking partition and permanent injunction. Initially, the first petitioner, who is the father of the second petitioner, was taking care of the case and later, due to his old age, he was bed ridden and affected with sudden



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memory loss, therefore, he was unable to proceed with the suit.

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3.2. Since, the first petitioner was taking care of the case on behalf of the second petitioner, the second petitioner was not aware of the proceedings and further, due to the covid, the petitioners were unable follow the proceedings of the case.

3.3. Thereafter, only in the year 2022, the petitioners came to know about the ex parte decree and judgment and thereby, they had filed an application seeking to condone the delay in filing the set aside petition.

3.4. The suit properties are self acquired properties of the first petitioner and the respondent has no right over it and only due to the sudden illness of the first petitioner, they were unable to file the condone delay petition within the specified period, whereas, the trial Judge failed to take into consideration the reasons stated by the petitioners and dismissed the application vide order 12.07.2024. Thereby, he seeks to set aside the order dated 12.07.2024.

4. Heard the learned counsel appearing for the petitioners and perused the materials available on record.



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5. On perusal of record, it is seen that in the suit filed by the respondent/plaintiff, a decree came to be passed by the trial Court on 27.11.2014 and subsequently, the final decree had been passed after notice on 28.06.2018 and the petitioners had filed an application seeking to set aside the ex parte decree only in the year 2022 with the delay of 2781 days. The trial Court, holding that the petitioners have deliberately approached the Court without any bona fide reasons for the delay of 2781 days and their lethargic attitude in conducting the case cannot be encouraged by the court of law, had dismissed the petition seeking to condone the delay.

6. It is relevant to refer to the decision rendered by the Hon'ble Apex Court in ***Union of India and Another vs Jahangir Byramji Jeejeebhoy (d) through his LR*** reported in ***2024 SCC Online 489***, wherein, the Hon'ble Apex Court has held as,

“ 35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have



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failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.”

7. Further, in the case of ***H.Guruswamy and Ors vs A.Krishnaiah Since deceased by Lrs (Civil Appeal No.317 of 2025) (Special Leave to Appeal (C) No.9719/2020 dated 08.01.2025***, the Apex Court has held as follows:

“ 13. Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as “liberal approach”, “Justice oriented approach”, “substantial justice” should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and 9 restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his



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right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the 10 opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time.'".

8. Section 5 of the Limitation Act is clear that only in the event of the petitioners satisfying the Court that he had shown sufficient cause for not preferring the appeal or making the application within such period, the Court shall admit the petition. Section 5 of Limitation Act is extracted for ready reference:-

***"5. Extension of prescribed period in certain cases. -
Any appeal or any application, other than an application under***



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any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.-The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

9. In this case, it is clear that the petitioners, who are in possession, have deliberately protracted the proceedings and the petitioners have not shown sufficient cause. Thereby, in view of the above, this Court is of the opinion that the trial Court had rightly dismissed the application and this Court does not find any illegality or infirmity in the order passed by the learned trial Judge.

10. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

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Index: Yes/No

Speaking/Non-speaking order

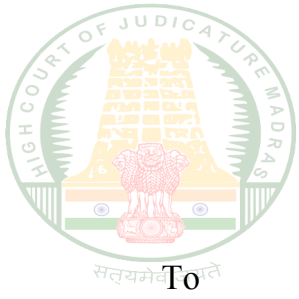


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Internet: Yes

Neutral Citation: Yes/No

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- To
1. The Sub-ordinate Judge, Attur.
 2. The Section Officer,
VR Section, High Court of Madras.



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A.D.JAGADISH CHANDIRA, J.

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