



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-07-2025

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THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

**CRP No. 1437 of 2025 and
CMP No.8467 of 2025**

M.John

Petitioner(s)

Vs

Philomina (died)

1. Gladius Christina

2. Metilda Rosy

3. Solomon Titus

4. Annie

5. Anu Sweety

Respondent(s)

Cause title accepted vide Court order dated 01.04.2025
made in CMP No.7486/2025 in CRP SR.No.43116 of 2025.

PRAYER: This Civil Revision Petition filed under Article 227 of Indian Constitution of India to strike off I.A. No.1 of 2024 in A.S. No.2 of 2020 on the file of the Additional District Court (FTC) Kancheepuram.

For Petitioner(s): Mr. A.E. Ravichandran

For Respondent(s): Mr. R. Harikrishnan

**ORDER**

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This revision has been filed to strike off the application filed under Section 5 of the Limitation Act to condone the delay of 29 days to rehear the appeal under Order 41 Rule 21.

2. Originally, one Philomina has filed the suit in O.S.No.105 of 2011 on the file of the Subordinate Judge, Kancheepuram for declaration of title, partition, delivery of possession and for injunction. The said suit was dismissed by the Trial Court, and the Trial Court also held that the 3rd defendant in the suit did not derive any title under the Will Ex.B.13.

3. Aggrieved over the same, the 3rd defendant, namely, John, filed an appeal before the Additional District Court (FTC), Kanchipuram in A.S.No.2 of 2020 and the First Appellate Court, by a judgment and decree dated 11.12.2023, allowed the same on merits. Thereafter, Philomina/plaintiff, who was arrayed as first respondent in the appeal, filed an application in I.A.No.1 of 2024 in A.S.No.2 of 2020 before the First Appellate Court to condone the delay of 29



days in filing application under Order 41 Rule 21 r/w Section 151 of CPC to rehear the appeal.

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4. Pending the condonation application, as the philomina/plaintiff/first respondent died, her legal heirs filed an impleading petition in I.A.No.2 of 2024 and the same was allowed on 27.01.2025.

5. The learned counsel for the petitioner would submit that the appeal has been allowed on merits after hearing both sides. However, now the application has been taken out to condone the delay of 29 days to entertain the application under Order 41 Rule 21 to rehear the appeal. Hence, according to the revision petitioner, the appeal has already been disposed of and the entire applications have to be struck off from the file.

6. The learned counsel for the respondents would submit that though the name of the Advocate, who originally appeared for the first respondent was recorded in the body of the Appellate Court's judgment, the fact remains that on



01.08.2023 itself, the Advocate of the deceased philomina, the first respondent therein, has filed a memo indicating that he has no instruction from his client.

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That memo was also recorded. In the “A” diary of A.S.No.2 of 2020, the said proceeding was clearly recorded. Thereafter, the appellant's arguments were alone heard and the appeal has been disposed of. As the argument of the first respondent/Philomina was not heard, she has the right to file an application under Order 41 rule 21. Hence, prays to dismiss the revision.

7. I have considered the matter in the light of the submissions of the learned counsel on both sides and perused the materials available on records, particularly, the certified copy of the “A” diary in the appeal procedures.

8. Though in the judgment passed by the First Appellate Court in A.S.No.2 of 2020, the name of the counsel, who appeared for first respondent/Philomina has been printed, the entire judgment does not indicate what is the nature of the submission made on behalf of her. But the certified copy of the “A” diary clearly shows that the appeal has been continuously



posted for arguments from 11.08.2022. On 01.08.2023, it is recorded as

follows:-

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“Appellant side present. Respondent side reported no instructions. Memo filed and Recorded. R1 called absent. For Appellant side further argument by 08.08.2023”.

9. On 08.08.2023, the appellant's side was heard and there is no representation for the respondents and hence the matter was posted for judgment by 22.08.2023. Again on 22.08.2023, as the judge was on Casual Leave, the matter was adjourned to 23.08.2023 and from 23.08.2023, again, the appeal was posted to 30.08.2023 for judgment. On 30.08.2023, the matter has been suo-motu reopened for clarification and the matter has been once again adjourned to 15.09.2023. Thereafter, the matter has been adjourned to several hearings and ultimately, judgment was pronounced on 11.12.2023.

10. The proceedings of the Court recorded in the “A” diary clearly indicates that the first respondent's side argument was not heard. The Trial Court, in fact, casually adjourned the matter under the pretext of clarification.



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11. Be that as it may, as the first respondent therein was not heard and she has the right to rehear under Order 41 Rule 21, accordingly, now it appears that an application has also been filed to condone the delay of 29 days. In the meanwhile, the first respondent therein, namely, Philomina died and her legal heirs have been brought on record and there was another delay and it was also occasioned by a delay of more than one year. All these delays could have been avoided by the First Appellate Court, the moment when the respondent's counsel reported no instruction, the Court ought to have sent notice to the respondents then and there.

12. Be that as it may, now the application under Section 5 of the Limitation Act has been filed, which is pending. This Court is inclined to allow the application filed under Section 5 of the limitation Act in I.A.No.1 of 2024 to condone the delay in filing the application under Order 41 Rule 21 and Section 151 of CPC to rehear the appeal.

13. Accordingly, the application filed under Section 5 of the Limitation



Act to condone the delay in I.A.No.1 of 2024 pending before the Additional

District Court, Kanchipuram is allowed. The First Appellate Court is directed to

hear the application filed under Order 41 Rule 21 and Section 151 of CPC, on

merits and in the event, the First Appellate Court allowing that application on

merits, dispose of the appeal in A.S.No.2 of 2020 within a period of one month

thereafter.

14. With the above direction, this Civil Revision Petition is disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

16-07-2025

mrp

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

The Additional District Court (FTC)

Kancheepuram.

N.SATHISH KUMAR J.



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