



CRP NPD.No.2614 of 2025

THE HIGH COURT OF JUDICATURE AT MADRAS

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Date : 01.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP [NPD] No.2614 of 2025 & CMP.No.14778 of 2025

1. Amudha
2. Sangeetha
3. Vembu
4. Dhanakkodi

. . . Petitioners

Versus

1. Velmurugan
2. Vijayakumar
3. Rani
Lakshmi [died]

. . . Respondents

PRAYER : Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal Order dated 09.04.2025 made in I.A.No.34 of 2020 in A.S.No.6 of 2013 on the file of the Additional District Court, Kallakurichi by allowing this Civil Revision Petition.

For petitioners : Mr.N.Manoharan

ORDER



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Challenge has been made against the Order passed by the appellate Court dismissing the application to condone the delay of 1873 days in filing an application to restore the appeal which was dismissed for default, in the present Civil Revision Petition.

2. The reason assigned in the application for condoning the delay of 1873 is that the first petitioner was conducting the case on behalf of the petitioners 2 to 5. The fourth petitioner was suffering from various ailments and was taking continuous treatment and he died on 10.12.2018. The appeal was dismissed on 06.08.2015. Since, the petitioners are taking care of the fourth defendant, they are not able file an application to restore the appeal immediately. That apart, the first petitioner was affected by jaundice and he was taking country medicine. Thereafter, they met the advocate. Therefore, their non appearance was neither willful nor wanton. Hence, there was a delay of 1873 days. The said application was opposed by the respondent on the ground that reason for the delay from 06.08.2015 to 22.09.2020 has not been stated in the petition and also no documentary evidence has been filed with



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regard to the treatment taken by the fourth defendant and the first petitioner and the delay has not been properly explained. The trial Court, taking note of the entire facts, particularly the oral evidence of P.W.1, had dismissed the application. Challenging the same, the present revision has been filed.

3. Heard both sides and perused entire materials available on record.

4. The learned counsel appearing for the petitioner would submit that the delay is beyond the control of the parties and pray for an opportunity to contest the appeal on merits. No doubt, the appeal is a statutory right. But at the same time, it is relevant to note that the suit itself is filed for partition and an ex parte decree has been passed and appeal filed as against which has also been dismissed. An application has been filed to condone the delay of 1873 days in filing an application to restore the appeal which has been dismissed for default. The reason assigned to condoning the delay is that one of the defendant was taking continuous treatment for various ailments and the petitioners were taking care of him. This Court is of the view that such bald



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allegations without any concrete proof cannot be accepted. The affidavit filed in support of the petition itself indicate that till the death of her husband, viz., the first defendant, he was regularly meeting the lawyer and he met the lawyer 6 years continuously. After the death of her husband, no steps have been taken by the other petitioners to restore the appeal and they were aware of the fact that the respondents are also entitled for a share. Having slept over so many years, without any proof for the alleged treatment taken by the first petitioner, as a matter of right, one cannot seek for condonation of such a huge delay. Hence, I do not find any merits in this Civil Revision Petition.

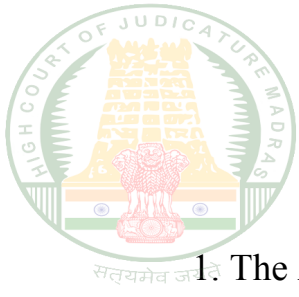
5. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.07.2025

Index : Yes / No
Internet: Yes
Speaking/non speaking order
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1. The Additional District Judge,
Kallakurichi.

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N. SATHISH KUMAR, J.

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