



CRP.No.5077 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.5077 of 2023

and

C.M.P.No.29510 of 2023

1.Subbulakshmi
2.Kalaiselvi
3.Priya

.. Petitioners

Versus

Periyasamy

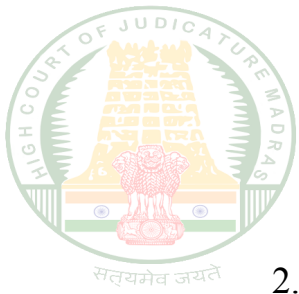
.. Respondent

Prayer:- Civil Revision Petition filed under Section 115 of Code of Civil Procedure to set aside the order dated 15.09.2023 made in I.A.No.520 of 2019 in O.S.No.259 of 2011 on the file of the Sub Court, Dharapuram.

For Petitioners : Mr.S.Saranraj
For Respondent : Mr.K.Sudhakar

ORDER

Challenging the order of the trial court dismissing the application to condone the delay of 1461 days in filing petition under Order 9 Rule 13 of CPC, the present Civil Revision Petition has been filed.



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2.Originally, the respondent filed a suit in O.S.No.259 of 2011 on the file of the Sub Court, Dharapuram, for partition and to declare the consent deed dated 23.07.2010 on the file of Sub Registrar, Moolanur as null and void. The said suit came to be decreed exparte on 23.01.2015. Therefore, the petitioners took up application to condone the delay of 1461 days in filing a petition for setting aside the exparte decree dated 23.01.2015 contending inter-alia that they were not aware of the exparte decree till the advocate commissioner visited in a final decree proceedings. It is their specific stand that summons were not served. Therefore, the delay. The same has been opposed by the respondent. The Trial Court after verifying the records found that the third defendant/son in law was served with the court summons and the second defendant, in fact, has refused the suit summons on 12.01.2012. The court summons was served on the third defendant on 20.03.2013 and ultimately dismissed the application. Challenging the said order, the present revision.

3. The learned counsel for the petitioner submitted that the petitioners did not received the suit summons and they were not aware of the exparte decree passed by the Trial Court and they came to know about the same



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only when the advocate commissioner visited the property. Hence, seeks for opportunity to contest the matter on merits and allowing this revision petition.

4. On the other hand, the learned counsel for the respondents 1 and 2 submitted that petitioners have not shown sufficient cause in condoning each days delay. The learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in *Majji Sannemma v. Reddy Sridevi and others* reported in *AIR 2022 SC 332*, wherein, the Hon'ble Supreme Court has held that when no explanation much less a sufficient or a satisfactory explanation has been offered by the appellants therein, the High Court is not at all justified in exercising its discretion to condone such a huge delay. Hence, the learned counsel opposed the revision.

5. Heard both sides and perused the materials placed on record.

6. The Court, in exercising discretion, particularly in these types of petitions, has to see the conduct, behaviour and attitude of a party relating to its inaction or negligence. The above factors are relevant to be taken into

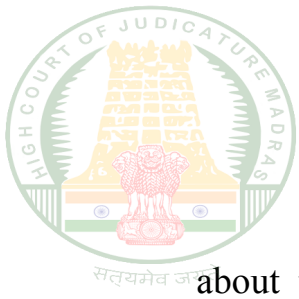


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consideration as the fundamental principle is that Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach. There is an increasing tendency to perceive delay even in a non-serious matter. Hence, the delay due to nonchalant attitude should be curbed at the initial stage itself.

7. The only reason assigned by the petitioners in the application to condone the delay is that the petitioners were not served with the suit summons and they were not aware of the exparte order. This Court is of the view that the very affidavit is contrary to the facts, this Court is of the view that when a false affidavit has been sworn before the Court to some how or other to protract the proceedings, such persons cannot be shown any mercy. It is also to be noted that the second defendant had refused the court summons and was set exparte on 12.01.2012.. The Trial Court has clearly recorded that all the petitioners were residing in the same address. When the third defendant was served with the court summons as early as on 20.03.2013, it is highly improbable to contend that they came to know



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about the proceedings only in the final decree proceedings. Thus, this Court does not find any merits in this revision.

8. Accordingly, this Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

05.06.2025

dhk

Internet : Yes
Index : Yes/No
Speaking order / Nonspeaking order
Neutral Citation : Yes/No

To

1. The Sub Judge, Dharapuram
 2. The Section Officer, VR Section
- Madras High Court



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N. SATHISH KUMAR, J.

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