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C.R.P.No.2020 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2025

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.2020 of 2025

And

C.M.P.No.11688 of 2025

S.Sankari

Rep. by her Power Agent

Mr.S.Sathyavendhan

... Petitioner

Vs.

1.Rani

2.Kasthuri

3.Maheswari

4.Satheesh

5.Vinothkumar

6.Rajesh

... Respondents

Prayer:

Petition filed under Section 115 of Civil Procedure Code praying to set aside the fair and decretal order dated 15.10.2024 in I.A.No.1 of 2023 in A.S.No.70 of 2017 on the file of Subordinate Judge, Poonamallee and allow the same.

For Petitioner : Mr.K.M.Vivekanandan

For Respondents : Mr.G.Dilipkumar

O R D E R

Challenging the order of the appellate Court dismissing the



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application to condone the delay of 33 days in restoring the appeal which was dismissed for default on 19.06.2023, the present revision is filed.

2.The respondents filed suit for declaration of title and recovery of possession. The suit came to be decreed in favour of the respondents. Challenging the decree and judgment, the revision petitioner filed appeal. When the appeal was posted for arguments on 19.06.2023, the same came to be dismissed for default as the argument was not advanced by the learned counsel. Therefore, the petitioner filed application to restore the appeal on the ground that she is the senior citizen suffering from diabetics and hypertension and was taking treatment in Bengaluru in her daughter's house. Therefore, she was under bed rest and hence she could not move out and come down to Chennai to instruct her counsel. Therefore, her counsel did not argue the matter on 19.06.2023. As a result, the appeal was dismissed for default.

3.Hence, the petitioner filed application to condone the delay of 33 days. The said application was opposed by the respondents stating that though the petitioner sought 26 adjournments, the petitioner did



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not argue the matter. The Appellate Court observing that the petitioner had not been ready and the appeal was dismissed after six consecutive adjournments spreading over the period of one year and the reason cited for the delay is unacceptable, dismissed the application. Challenging the same, the present revision has been filed.

4.Heard both sides.

5.It is the contention of the learned counsel appearing for the petitioner that the delay is only 33 days. If the counsel has argued the case in appeal, the appellant/ petitioner has substantive right and the petitioner's right cannot be shut by dismissing the application to condone the delay of 33 days.

6.The learned counsel appearing for the respondents would submit that now execution petition also filed and he has taken possession of the property and execution petition is also terminated by order of the execution Court on 22.01.2025. Therefore, opposed the revision.

7.I have perused the entire materials.

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8.The petitioner filed an application to condone the delay of 33 days. The petitioner has clearly stated about her inability to come to Chennai to instruct her counsel as she was held up in Bengaluru due to various ailments. Even though sufficient evidence has not been adduced, this Court is of the view that first appeal being statutory one, the right of appeal cannot be curtailed at the initial stage. Even assuming that the delay has not been properly explained, the Court has to see the substantive rights of the parties.

9.This Court is inclined to condone the delay. The impugned order is set aside and the lower appellate Court is directed to re-hear the appeal and dispose of the same within a period of three months from the date of receipt of a copy of this order.

10.With regard to the contention of the learned counsel appearing for the respondents that they took delivery in pursuant to the decree and judgment and execution petition is also terminated, it is relevant to note that such delivery has been effected through the process of law. Let the respondents continue in possession of the property. Only in the event of the petitioner/ appellant succeeding in



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the appeal, she is entitled to seek for restitution as per Section 144 of Civil Procedure Code.

11.With the above observation, the civil revision petition is allowed. The learned Subordinate Judge, Poonamallee, is directed to dispose of the appeal in A.S.No.70 of 2017, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

23.06.2025

pri

Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Subordinate Judge,
Poonamallee.



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N.SATHISH KUMAR,J.
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