

(2000) 09 MAD CK 0023
In the Madras High Court
Case No : C.R.P.No. 673 of 2000

Kannammal and another

APPELLANT

Vs

Subatra

RESPONDENT

Date of Decision : 20-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2000) 4 CTC 161 : (2001) 1 LW 406

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : Mr. A.K. Kumarsamy, for the Appellant; Mr. T. Murugamanickam, for the Respondent

Judgement

1. The petitioners herein, who suffered a preliminary decree in the suit for partition, had preferred an appeal A.S.No.236 of 1996 on the file of the First Additional District Judge. Erode. The said appeal was dismissed for default on 25.11.1997. The petitioners filed an application for setting aside the order of dismissal on 23.12.1997. The said-application was returned by the lower appellate Court for certain compliance. Neither the petitioners nor their counsel evinced any interest in representing the matter and pursued the same. However, the said papers were represented with a delay of 636 days! Now, I.A.No.240 of 1999 filed by the petitioners to condone the delay of 636 days in representing the papers had been dismissed by the lower appellate Court and against the same, the present revision petition has been filed.
2. Learned counsel for the petitioners represents that the second appellant Mr.Gunasekaran was looking after the matter and since he died, the other appellants were not aware about the proceedings. Hence, the appeal was

dismissed for default and immediately, the petitioners herein filed an application for restoration of the appeal. Hence, there is some delay.

3. I have carefully considered the contentions of the learned counsel for the petitioners. When the petitioners have filed an application for restoration of the appeal, which was dismissed for default without any delay, there is absolutely no reason for the delay in representing the papers.

The delay in representation must be either due to the counsel or his clerk, unless some rectification, has to be made by the petitioners herein. The affidavit filed in support of the petition for condoning the delay in representation does not reveal as to what was the defect pointed out by the lower appellate Court and why there was enormous delay. In the affidavit filed in support of the said petition, it is only stated that the said Gunasekaran was looking after the matter and because of his sudden demise, the petitioners were not aware about the pendency of the matter to attend the same.

4. As already stated, the petitioners herein have filed the application for restoration of the appeal without any delay and the delay is only in representing the matter. As there is a delay in representation, as held by this Court in the judgment in the case of S. Saravanan rep. by mother and next friend A. Latha Vs. The Chief Judge Court of Small Causes (Motor Accidents Claims Tribunal) Chennai-104, , this Court need not be very strict in condoning the delay. But at the same time, this Court has to take into consideration the conduct of the parties in filing the papers defectively and after return, failing to represent the same within the stipulated time ultimately, by this procedure, the matters are being unduly delayed, which may end in the benefit of one and for the inconvenience of the other. Hence, the party, who suffers by such conduct of the other should be compensated.

5. Hence, following the said principle laid down by this Court in the above referred judgment, I condone the delay in representation and set aside the order of the lower Court on condition that the petitioners shall pay a sum of Rs.1,500 (Rupees one thousand and five hundred only) within two weeks to the respondent in this revision petition, failing which, the petition for condoning the delay in representation shall stand dismissed automatically. The lower Court is directed to restore the appeal on file and

dispose of the same within two months. Neither of the parties are entitled to prolong the matter on any ground. The final"" decree-proceedings can be proceeded with and the passing of final decree atone is stayed till the disposal of the appeal.

6. The civil revision petition is allowed with the above observations. No costs.