

IN THE COURT OF ADDITIONAL DISTRICT JUDGE,
TIRUVANNAMALAI

PRESENT : Tr. B.C. GOPINATH, M.L.,
Additional District Judge,
Tiruvannamalai.,

Saturday, the 4th day of January 2025
I.A.No. 2 / 2022 in O.S.No.132 / 2021

1. Ayyammal

2. Minor Shashaank,

represented by his Guardian / paternal Grand mother/

1st petitioner/ 1st defendant.

.... Petitioners / Defendants

/vs/

1. Subbulakshmi

2. Minor Sacchin Dhiya Bairavi

Represented by her Guardian mother /

1st respondent / 1st plaintiff

... Respondents / Plaintiffs

This petition coming before me for final hearing on
18.12.2024 in the presence of Tr. R.G.Srinivasan Advocate for the
petitioners and Tr. G.Pugazhenthii Advocate for the Respondents,
and after hearing the arguments of both, upon perusing the
records and having stood over for consideration, till this day, this

court passed the following

ORDER

This is a petition U/S. 5 of the Limitation Act, to condone the delay of 102 days in filing an application under Order IX Rule 13 CPC.

1) PETITIONERS CASE IN BRIEF:

The Petitioners are defendants in the above suit. The supporting affidavit to the petition has been filed by the 1st petitioner / 1st defendant. The Respondent / Plaintiffs has filed the above suit for partition and separate possession and permanent injunction with costs. The above suit was posted to 12.04.2022 for filing Written Statement. Due to business commitments, the petitioner was not able to give instructions to her counsel for filing written statement. Hence Written Statement could not be filed on 29.06.2022 and consequently, the petitioners were set exparte. Hence the petition to set aside the exparte order against them.

2) AVERMENTS IN THE COUNTER :-

The petition is not maintainable in law or on facts. The petitioner to condone the delay of 102 days to file the petition to set aside the ex parte decree dated 29.06.2022 is not maintainable. There are no merits or bonafides in the present application filed by the petitioner and the same is devoid of merits, lacks bonafide and deserves to be dismissed with cost of respondents.

3) During enquiry, no evidence, oral or documentary was let in. This Court has perused the materials on record and has considered rival submissions.

4) Now the point for consideration is whether the delay of 102 days in filing an application under Order IX Rule 13 CPC can be condoned or not ?

5) Point :-

The above suit has been filed by the Respondents / Plaintiffs for Partition and Separate Possession and Permanent Injunction. From the records, it is seen that the defendants failed to file their Written Statement after sufficient time and therefore they were set

exparte on 29.06.2022. This petition has been filed to condone delay in filing a petition to set aside that order. The respondents / plaintiffs in their counter, have stated that the petitioners were set exparte on 12.04.2022, which is against facts. The reason assigned by the petitioners / defendants is that the 1st Petitioner was preoccupied with the business and family situation and hence she could not give instructions to the counsel. Though the reason, does not appear convincing, this being a suit for partition and permanent injunction, this court is of the considered view that the petitioners can be put to terms while giving an opportunity to contest on merits. The point is answered accordingly.

In the result, the petition is allowed, on condition that the 1st Petitioner pay Rs.500/- as costs to the 1st Respondent on or before 21.01.2025 failing which the petition shall stand dismissed. Call on 22.01.2025.

Dictated to the Steno-Typist of this Court, transcribed by her in computer, corrected and pronounced by me in open court, this the 4th th day of January , 2025.

(Sd/- B.C. GOPINATH),
Additional District Judge,
Tiruvannamalai.

// True copy //

FAIR ORDER
I.A.2/2022
(OS.132/2021)
Dated 04.01.2025

I.A. No. 2/2022 in O.S.NO.132/2021 ADJ,TVM,

Date : 04.01.2025