



C.R.P.(MD)No.1152 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2023

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**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

C.R.P.(MD)No.1152 of 2023

Angusamy

.. Petitioner

Versus

1.Ganesan  
2.Kumaresan  
3.Murugan

.. Respondents

**Prayer :-** Petition filed under Section 115 of C.P.C., against the fair order and decreetal order dated 26.08.2022, in I.A.No.210 of 2019 in O.S.No.1 of 2012, on the file of the District Munsif Court, Paramakudi.

For Petitioner : Mr.R.Gowrishankar

For Respondents : Mr.G.Praba Hari

**ORDER**

This Civil Revision Petition has been filed against the fair order and decreetal order dated 26.08.2022, in I.A.No.210 of 2019 in O.S.No.1 of 2012, on the file of the District Munsif Court, Paramakudi.

2.The petitioner is the plaintiff in O.S.No.1 of 2012 before the District Munsif Court, Paramakudi. The said suit has been filed by the petitioner against the



respondents for a permanent injunction to restrain them from interfering with the petitioner's peaceful possession of the suit schedule property. The prayer in the plaint reads as under:-

"(அ) தாவா சொத்து வாதிக்கு பாத்தியம் என்று டிக்ளோர் செய்து அதன் தொடர்ச்சியாக தாவா சொத்தை வாதி அனுபவம் செய்வதில் எதிர்வாதிகள் தடையிடைஞ்சல் செய்யாமல் இருக்கத்தக்கதாய் எதிர்வாதிகளை restrain செய்து permanent injunction பரிகாரம் அளித்தும்,

(ஆ) இவ்வழக்கின் செலவை வாதிக்கு எதிர்வாதிகளை கொடுக்கச் சொல்லி உத்தரவு பிறப்புவித்தும்,

(இ) இவ்வழக்கின் தன்மைக்கேற்ற இதர பரிகாரங்கள் அளித்தும் தீர்ப்புச் செய்யும்படி பிரார்த்திக்கப்படுகிறது."

3.The said suit was dismissed for non-prosecution/non-appearance of the petitioner on 25.04.2014.

4.It is the case of the petitioner that the case was otherwise adjourned to 24.04.2014. However, the said date was declared as Court Holiday on account of Parliamentary Election and that the case was thereafter called on 25.04.2014, on which date, it was dismissed for non-prosecution. It is submitted that the petitioner came to know about the dismissal much later and therefore, he filed I.A.No.210 of 2019 under Section 5 of the Limitation Act, to condone the delay of 1734 days to file the restoration application.



5. It is submitted that the Trial Court has committed grave error in dismissing the application filed by the petitioner for condoning the delay in filing the restoration application. Hence, the learned counsel prayed for allowing the present Civil Revision Petition.

6. I have heard the learned counsel for the petitioner and the learned counsel for the respondents.

7. The delay of 1734 days in filing an application to restore the suit that was dismissed on 25.04.2014 has not been properly explained by the petitioner in the affidavit filed in support of the above application. The Trial Court has dismissed the application with the following observations:-

"5. Point for consideration:-

*Whether this delay condone petition is to be allowed or not?*

6. Point:-

*a. The petitioners are the plaintiffs in a suit. The suit was dismissed for default on 25.04.2014 due to non-appearance of petitioner. The reason for their absence is originally the case was posted on 24.04.2014 and due to parliament election, that day was declared as holiday and he did not know when his case actually posted. He came to know that his case was taken on 25.04.2014 and dismissed. The then Judge intentionally taken his case on next day and dismissed.*

*b. It is duty of the petitioner who has to explain the reason for delay. In this case, the suit was dismissed on 25.04.2014. But this petition filed only on 22.02.2019. Why the petitioner took 1734 days to file restore petition there is no reason. The contention of the petitioner is that on 24.04.2014 he came to court and as that day was declared as public holiday he went. Why he did not take steps for knowing next hearing date immediately. Why he took 5 years to know the next hearing. These are all questions remained unanswered.*



*c. The petitioner did not assign any valid reason for 1734 days delay to file restore petition. The respondent alleged that the petitioner already let the case for dismissed for default and this court gave chance to petitioner to contest the case. Therefore on seeing the conduct of the petitioner, he is not willing to contest the case. Further he made allegations against the then learned Judge that he intentionally posted the case on 25.04.2014. It is quite natural that if a day accidentally declared as holiday, all cases may be taken on next day. Therefore the reason for non appearance is also not acceptable.*

*7.In the result, for the above said reasons, this petition is dismissed. No cost."*

8.In my view, the affidavit that was filed by the petitioner before the Trial Court in support of I.A.No.210 of 2019 does not give sufficient reasons for the Court to condone the delay. In any event, the suit was filed by the petitioner for a permanent injunction. Therefore, no prejudice would be caused to the respondents by dismissal of the suit. Perhaps, it is on account of the same, the petitioner did not choose to file an application at an earlier date.

9.In view of the above, I do not wish to interfere with the impugned order passed by the learned District Munsif, Paramakudi. Therefore, the present Civil Revision Petition is liable to be dismissed. Accordingly, it is dismissed. No costs.

NCC : Yes/No  
Index : Yes/No  
Internet : Yes/No  
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27.04.2023



To

The District Munsif,  
Paramakudi.



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**C.SARAVANAN, J.**

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Order made in  
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