

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD) NO.2192 OF 2017
AND CMP NO.10480 OF 2017

Periyasamy

... Petitioner

Vs.

Kangarathinam

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order of dismissing I.A.No.123 of 2017 in I.A.No.750 of 2016 in O.S.No.359 of 2013 dated 25.04.2017 passed by the learned District Munsif at Athur, Salem.

For Petitioner : Mr.P.I.Thirumoorthy

ORDER

This Civil Revision Petition has been filed against the order dated 25.04.2017 passed in I.A.No.123 of 2017 in I.A.No.750 of 2016 in O.S.No.359 of 2013 dated 25.04.2017 passed by the learned District Munsif at Athur, Salem.

2. In the suit filed for declaration of title and permanent injunction, the respondent / defendant was set *exparte*. The defendant filed a petition to set aside the *exparte* decree with a delay of 503

days. The reason stated in the condone delay petition was that he was suffering from Jaundice and was bedridden throughout. He has taken country medicine and the Doctor advised him not to go out in the sunlight and hence, he remained in bed throughout. Therefore, there was a delay of 503 days in filing the petition to set aside the *exparte* decree.

3. The petitioner / plaintiff has filed a counter statement stating that the reasons stated in the condone delay petition are false and lacks *bonafide*, as the respondent / defendant was very active during the said period. In fact, there was a assault case filed against the respondent / defendant and FIR was also registered against him. When the petitioner / plaintiff produced the FIR before the Trial Court, he was advised to file a certified copy of the FIR. Therefore, he obtained a certified copy of FIR and filed a petition to receive the same as a document.

4. The Trial Court while considering the said petition has observed that the reason for filing FIR was not clearly explained and it will be received while considering the condone delay petition. Aggrieved over the dismissal of the petition to receive the FIR, the petitioner / plaintiff is before this Court.

5. Considering the factual aspects of the matter and as categorically observed by the Trial Court that the FIR will be considered at the time of disposing the condone delay petition, this Court is of the view that the Trial Court has rightly decided the issue and there is no discrepancy in the order passed by the Trial Court.

6. The Civil Revision Petition is disposed of with a direction to the Trial Court to take into account the FIR filed against the respondent/defendant at the time of disposal of the condone delay petition. The Trial Court is further directed to dispose of the interlocutory application in I.A.No.750 of 2016 in O.S.No.359 of 2013, as expeditiously as possible. No costs. Consequently, connected civil miscellaneous petition is closed.

सत्यमेव जयते

07.07.2017

Index : Yes/No
Internet : Yes/No
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M.GOVINDARAJ, J.

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To

The District Munsif
Salem.



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