

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated: 03.03.2017**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**

**CRP(NPD)No.2395 of 2009**

Paramasivam

.... Petitioner

Vs.

1.Ramu Chetty

2.Madhan

3.Perumal

4.Gopal

5.Kannan

6.Govindan

7.Chennakannu

8.Govindan

9.Chandran

10.Mookan @ Govindan

11.Krishnan

... Respondents

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**Prayer:** Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decreetal order dated 15.06.2009 made in I.A.No.192 of 2008 in O.S.No.65 of 2000, on the file of the District Munsif at Pennagaram.

For Petitioner : Mr.M.Selvam  
for M/s.G.Sumitra

For Respondents : No Appearance

**ORDER**

The petitioner herein is the plaintiff in a suit in O.S.No.65 of 2000 on the file of learned District Munsif Court, Pennakaram for the Relief of Declaration and Injunction in respect of suit schedule property, filed as against the respondents on 26.09.2000.

2.The second defendant in the suit alone has filed his written statement denying the plaint averments.

3.The record discloses that in the meantime the suit is found dismissed for default.

4.In the said factual backdrop alleging that his Counsel has failed to conduct the case despite due instruction by the plaintiff has filed an application under Order IX Rule 9 of CPC to restore the suit. As the same was not able to be made in time and there was delay the petitioner herein has filed the above interlocutory application in I.A.No.192 of 2008 under Section 5 of Limitation Act seeking to condone the delay in filing the above Restoration application. There was 782 days delay in filing the above application.

5.The contention of the Revision petitioner is that in spite of due instruction to his Counsel to inform the plaintiff / revision petitioner as and when he is required before the Court, his counsel failed to conduct the case on behalf of the petitioner and further he also failed to update the status of the suit.

6.It is the contention of the second respondent / second defendant that the reason assigned cannot be accepted as in the contemporary period the plaintiff / petitioner has conducted a case in C.C.No.192 of 2002 in the very same Court.

7.It is found that the Learned Trial Judge on relying upon the version of the 2<sup>nd</sup> respondent has dismissed the revision Petitioner's application holding that the reason assigned to restore the suit is unacceptable.

8.I heard Mr.M.Selvam, learned counsel for the petitioner and perused the entire materials available on record. No representation on behalf of the respondents.

9. On perusal of the record it is seen that the respondents have not produced any evidence to establish that the petitioner was appearing in yet another case in the contemporary period.

10. It is further seen that it is the specific case of petitioner that he was uninformed by his Counsel.

11. It is quite natural that a plaintiff will be interested to pursue his suit to obtain the relief prayed in the plaint.

12. It is equally important to state that Restoration of the above suit will not cause any prejudice to the defendants.

13. Considering over all aspect of the case, this Court in the interest of justice, inclined to allow this civil revision petition, provided on payment of cost.

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14.In the result, this Civil Revision Petition is allowed on condition that the petitioner should pay a sum of Rs.15,000/- as cost to the Chief Justice Relief Fund, Madras High Court, Chennai within a period of four weeks from the date of receipt of a copy this order.

**03.03.2017**

vs

Note:Issue order copy on 25.01.2019

Internet:Yes

Index:Yes

To

The District Munsif, Pennagaram.

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**M.V.MURALIDARAN, J.**

VS



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