IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.04.2018

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

C.R.P.(NPD)No.1390 of 2018

Govindaraju ... Petitioner

Vs.

1. Chellappan
2. Krishnan ... Respondents
Veerappan (died)
Unnamalai (died)

Civil Revision Petition has been filed under Article 227 of the Constitution of India against the dismissal order of the II Additional District Munsif Court, Salem in I.A.No.31 of 2017 in O.S.No.742 of 2011 dated 24.03.2017.

For Petitioner : Mr.T.Ganesan

O R D E R

This civil revision petition has been filed against the dismissal order of the II Additional District Munsif Court, Salem in I.A.No.31 of 2017 in O.S.No.742 of 2011 dated 24.03.2017.

2 The revision petitioner is defendant in the suit in O.S.No.742 of 2011 filed by the respondents herein for declaration and permanent injunction.

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The revision petitioner also filed a suit against the respondents herein in O.S.No.695 of 2011 on the file of the Sub-Court, Salem. Both the suits are pending before the different courts.

3 The revision petitioner filed an application in I.A.No.31 of 2017 in O.S.No.742 of 2011 under Section 5 of the Indian Limitation Act, to condone the delay of 676 days in filing the petition to set aside the exparty decree dated 11.11.2014. The respondents/plaintiffs opposed the said application by filing their counter.

4 The trial Court after considering the arguments advanced on either side, dismissed the application by an order dated 24.03.2017 by observing that there is no valid reason stated in the affidavit to condone the delay of 676 days in filing the petition to set aside the exparte order.

5 Aggrieved against the order dated 24.03.2017 made in I.A.No.31 of 2017 in O.S.No.742 of 2011, the revision petitioner has now come forward with the present civil revision petition.

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6 Heard the learned counsel for the petitioner and perused the materials available on record.

7 It is an admitted fact that the revision petitioner has also filed a suit in O.S.No.695 of 2011. According to the learned counsel for the revision petitioner, the delay of 676 days has been occurred due to ill health and bedridden of his grand father. This Court is of the view that when the suit filed by the revision petitioner is going on without any hindrance, the aforesaid reason in other case in which he was the defendant is not acceptable.

8 However, the suit filed by the revision petitioner against the respondent is pending and due to carelessness on the part of the counsel, the parties should not be suffered, the Hon'ble Supreme Court time and again held that there shall be a liberal approach while dealing with the application to condone the delay. Considering the same in the interest of justice, this Court is inclined to allow the revision, but at the same time, the respondent should also adequately be compensated with cost.

P.VELMURUGAN, J.,

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9 In view of the reasons stated above, the order dated 24.03.2017 made in I.A.No.31 of 2017 in O.S.No.742 of 2011, on the file of the learned Additional District Munsif, Salem, is hereby set aside. The petitioner/defendant is directed to pay a sum of Rs.10,000/- to the respondents/plaintiffs within a period of two weeks from the date of receipt of a copy of this order, failing which, the petition to condone the delay in I.A.No.31 of 2017 in O.S.No.742 of 2011 shall stands dismissed automatically without any further reference. Since the learned counsel for the petitioner himself admitted that due to his own fault that nothing has been elucidated in the affidavit filed in support of the petition to condone the delay, the petitioner is at liberty to recover the cost to be payable by him from the learned counsel for the petitioner.

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Index:Yes/No
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To
The II Additional District Munsif Court, Salem.

C.R.P.(NPD)No.1390 of 2018

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