

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.(NPD).No.970 of 2016

G.Vetrivel

..Petitioner

Vs.

S.Kuppan

..Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal order in I.A.No.1512 of 2013 in O.S.No.275 of 2008 on the file of the District Munsif Court, Chengalpattu.

For petitioner : Mr.G.A.Thiyagarajan

For Respondent : Mr.A.Ramalingam

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ORDER

सत्यमेव जयते

This Civil Revision Petition has been filed to set aside the fair and decreetal order in I.A.No.1512 of 2013 in O.S.No.275 of 2008 on the file of the District Munsif Court, Chengalpattu.

2. According to the revision petitioner, the revision petitioner has filed a suit in O.S.No.275 of 2008 on the file of the District Munsif Court at Chengalpattu for permanent injunction as against the respondent/defendant. The aforesaid suit was dismissed for default on 04.04.2012. Thereafter, the petitioner filed an Interlocutory Application in I.A.No.1512 of 2013 to condone the delay of 261 days in filing the application to restore the suit. The said application was dismissed by the Court below and therefore, the revision petitioner filed the present Civil Revision Petition before this Court.

3. According to the petitioner, the petitioner's counsel has engaged a junior Advocate to follow the case. The said Advocate has given hearing dates of the case upto November 2012, thereafter, on verification, the petitioner's counsel came to know that the aforesaid suit was dismissed for default and there is neither wilful nor wanton and the same is beyond the control.

4. The learned counsel for the respondent would submit that the delay of 261 days cannot be condoned to restore the above suit and the Court below has rightly dismissed the said application and there is no warrant to interfere with the order passed by the Court below and the Civil Revision Petition is liable to be dismissed.

5.By considering the rival submissions made by the parties and perused the materials on records. The petitioner filed an application in I.A.No.1512 of 2013 by stating the reason that the petitioner's counsel engaged a junior counsel to follow the case and he has not intimated about the dismissal of the suit to the petitioner's counsel. On verification, the Senior Counsel had come to know about that the said suit was dismissed for default. Thereafter, the application in I.A.No.1512 of 2013 was filed by the petitioner to condone the delay of 261 days in filing the application to restore the suit.

6.By accepting the reasons stated in the affidavit, and in the light of the decision of the Hon'ble Supreme Court of India in the case of ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors., reported in (2013) 12 SCC 649***, the Hon'ble Supreme Court has observed that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice. This Court is inclined to allow the condone delay application, by setting aside the order passed by the Court below.

7. In fine, the impugned order passed by the learned District Munsif, Chengalpattu in I.A.No.1512 of 2013 in O.S.No.275 of 2008 is set aside and the Civil Revision Petition is allowed, subject to payment of cost of Rs.5,000/- (Rupees Five Thousand only) payable by the petitioner to the respondent, within a period of two weeks from the date of receipt of a copy of this order, failing which the Civil Revision Petition stands dismissed.

07.03.2018

Speaking/Non-speaking order

Index :Yes/No

Internet :Yes/No

Issue Order Copy on 02.05.2018

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To

The District Munsif,
Chengalpattu.

सत्यमेव जयते

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D.KRISHNAKUMAR. J,

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