



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**C.R.P. (NPD) (MD) No.774 of 2018
and C.M.P. (MD) No.3432 of 2018**

Thirumalai Kumar ... Petitioner/ Petitioner/1st Defendant

-vs-

Ganapathy Narayanan ... Respondent /Respondent / Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the fair and decreetal order, passed in I.A.No.388 of 2012 in O.S.No.93 of 2006 dated 03.04.2017, on the file of the Principle Sub Court, Tenkasi.

For Petitioner : Mr.F.X.Eugene
For Respondent : Mr.J.Viswanathan

O R D E R

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

2.The plaintiff has filed a suit in O.S.No.93 of 2006 before the Sub Court, Tenkasi for partition. The suit was decreed set exparte on 04.11.2018 against the defendants 1 & 3 to 9, pursuant to their non appearance before the Trial court, aggrieved by which the revision petitioner / 1st defendant filed an application in I.A.No.388 of 2012 before the Trial Court to condone the delay of 1176 days in filing a petition to set aside the order dated 04.11.2008. The said application came to be dismissed on 03.04.2017. Aggrieved against the said order of dismissal, the petitioner is before this Court.

3.It is a settled principle of law that courts must be liberal in considering the petition to condone the delay, especially in the matter, where an exparte order is passed, so as to provide an opportunity to the affected party to defend their case.

4.Keeping in mind the same, if the present case is looked into, this Court is of the view that the petition ought to be allowed and order dated 03.04.2017 made in I.A.No.388 of 2012 in



O.S.No.93 of 2006, on the file of the Principal Sub Court, Tenkasi is liable to be set aside.

5.Thus, considering the nature of the case and also taking into consideration the reasons assigned in the affidavit filed in support of this petition, this Court is inclined to allow this petition.

In the result,

a)the Civil Revision Petition is allowed;

b)the order dated 03.04.2017 made in I.A.No.388 of 2012 in O.S.No.93 of 2006, on the file of the Principle Sub Court, Tenkasi, is set aside and the delay is condoned;

c)the petitioner is directed to pay a sum of Rs.30,000/- to the learned counsel for the respondent within a period of two weeks from the date of receipt of a copy of this order.

d)the Trial Court is directed to number the set aside application and dispose of the suit in O.S.No.93 of 2006 within a period of three months from the date of receipt of a copy of this order.

No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To:

1.The Principle Sub Court, Tenkasi.

2.The Record Keeper, VR Section.

Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 cc to Mr.F.X.Eugene, Advocate in SR No.61237

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PK/RR/SAR-1/04.06.2018: 2P/5C