

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.02.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD)No.3191 of 2013  
and M.P.No.1 of 2013

N.Jeevanandham

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Petitioner

*versus*

M/s.Sree Ranganathan Spinners,  
A partnership firm represented  
by its partners K.Devakrishnan  
and Malathy,  
S/o.Kasiyappa Mudaliar,  
W/o.Devakrishnan, 123,  
Satyanarayapuram,  
Chinthamanipudur,  
Coimbatore.



Respondent

**PRAYER:** Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the order dated 21.06.2013 made in I.A.No.270 of 2013 in O.S.No.569 of 2009 on the file of the learned I Assistant Subordinate Judge, Coimbatore.

For Petitioner

: Mr.K.Balakrishnan

For Respondent

: Mr.P.K.Rajagopal

**ORDER**

This Civil Revision Petition has been filed against the order dated 21.06.2013 made in I.A.No.270 of 2013 in O.S.No.569 of 2009 on the file of the learned I Assistant Subordinate Judge, Coimbatore.

2. The respondent herein as the plaintiff has filed suit in O.S.No.569 of 2009 for recovery of money. Since suit summons was served on the petitioner, he did not appear before the trial Court. Hence, the petitioner was set *ex parte* and the *ex parte* decree was passed on 21.06.2013. After receipt of the notice in the Execution proceedings, the petitioner has filed an application for setting aside the *ex parte* decree along with the application to condone the delay of 846 days.

3. It is the contention of the revision petitioner that the trial Court without deciding the application filed under Section 5 of the Limitation Act to condone the delay of 846 days in filing the application to set aside the *ex parte* decree, straight away allowed the application filed under Order 9 Rule 13 of the Code of Civil Procedure, on condition that the revision petitioner shall deposit half of the decree amount on or before 12.07.2013,

failing which, the petition stands dismissed.

4. Aggrieved over the above said order dated 21.06.2013, the revision petitioner is before this Court with the present Civil Revision Petition.

5. Heard the learned counsel on either side and perused the materials available on record.

6. On perusal of the orders of the trial Court shows that the trial Court has straight away allowed the application filed under Order 9 Rule 13 of the Code of Civil Procedure, even without deciding the application filed under Section 5 of the Limitation Act, to condone the delay. Such order cannot be sustained in the eye of law. Further, the condition imposed by the trial Court is also not in according to law. Hence, this Court is of the view that the revision petition has to be allowed and the order dated 21.06.2013 has to be set aside.

7. In the result, this Civil Revision Petition is allowed and the order of the trial Court passed in I.A.No.270 of 2013 in O.S.No.569 of 2009 dated 21.06.2013 is hereby set aside. The trial Court is directed to decide the application filed under Section 5 of the Limitation Act, on merits and

thereafter, decide the application filed under Order 9 Rule 13 of the Code of Civil Procedure. The trial Court shall decide the above applications, within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

14.02.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

sri



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To

The I Assistant Subordinate Judge,  
Coimbatore.



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N.SATHISH KUMAR, J.,

sri



C.R.P. (NPD) No. 3191 of 2013  
and M.P. No. 1 of 2013

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