



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2019

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P (NPD) (MD) No.441 of 2011

WEB COPY

Muthiah Thevar

: Petitioner/Petitioner

.. Vs ..

1.M.Ayyathevar

2.Nainar Thevar

3.Velu Thevar

4.Ramiah Thevar

5.Kodungala Thevar

: Respondents/Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying to set aside the order passed in I.A.No.16 of 2009 in A.S.No.51 of 2002 by the Principal Sub Court at Sankarankoil, dated 30.01.2010 under Section 115 of Civil Procedure Code.

For Petitioner : Mr.Ramesh @ Ramaiah

For Respondents : No appearance
1 and 3For respondents : Mr.D.Nallathambi
2, 4 and 5

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ORDER

This Civil Revision Petition is filed as against the order passed by the Sub Court, Sankarankovil, in I.A.No.16 of 2009 in A.S.No.51 of 2002.

2.The revision petitioner, as plaintiff, filed a suit in O.S.No.187 of 1997 before the Principal District Munsif Court, Sankarankovil, for declaration of title and consequential permanent injunction and mandatory injunction in relation to the suit properties. The suit was dismissed and the revision petitioner preferred an appeal in A.S.No.51 of 2002 on the file of the Sub Court, Sankarankovil. During the pendency of the appeal, the matter was taken on file on 19.09.2002 and the appellate Court dismissed the appeal for non-prosecution as the revision petitioner did not appear. Hence, the revision petitioner filed a petition to restore the appeal in I.A.No.16 of 2009 on the ground that he was undertaking treatment pursuant to an abdominal operation between 18.09.2002 and 10.10.2002.



to prove that he was taking treatment. In this case, the revision petitioner in his affidavit filed in support of the petition filed before the lower Court has given sufficient reason for his non-appearance when the matter was called on 10.10.2002. The lower Court dismissed the petition only on the ground that the petitioner has not produced records to show that he was taking treatment and that there was no sufficient cause for his non-appearance. Further, the lower Court observed that the revision petitioner delayed numbering the application by promptly serving notice to the other side. Normally, in cases like this, Court will always inclined to show some lenience so as to give sufficient opportunity to the person concerned to conduct the trial or prosecute the matter on merits. Any mistake or temporary negligence need not be focussed to affect the litigant and the Courts are expected not to adopt a pedantic approach. When the petitioner has complained that he was suffering from some ailment and there is no record to show that he was active by some other evidence to disprove the case of sickness, the Court may not refuse to condone the delay or entertain the petition of this nature. The respondent has not produced any material to doubt the case of petitioner. Court is always expected to show a reasonable and fair attitude. Going by the records, this Court is of the view that the delay has been properly explained and therefore, the petitioner is entitled to succeed.

4.As a result, this Civil Revision Petition is allowed and the order passed in I.A.No.16 of 2009 in A.S.No.51 of 2002 is set aside and the application filed by the revision petition in I.A.No.16 of 2009 stands allowed. The petitioner is directed to pay cost of Rs.2,000/- (Rupees Two thousand only) to the learned Counsel for the respondents within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

Sub Assistant Registrar(CS)

SRM

To

The Principal Sub Court,
Sankarankoil.

COPY TO:

The Section Officer, V.R.Section,
Madruai Bench of Madras High Court, Madurai.

+1CC TO M/S.S.RAMESH @ RAMIAH, SR.NO.68157

<https://hcservices.ecourts.gov.in/hcservices/>

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