

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2020

PRONOUNCED ON : 11.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(NPD)No.2462 of 2016
CMP.No.12806 of 2016
(Through Video Conferencing)

M/s.Velmurugan Stores, represented
by its Partners, S.Vasudevan and T.Sugirtha Randy
Coimbatore 641 001

Petitioner

Vs

Singaraj, Sole Proprietor of
Kavitha Maligai, Coimbatore 641 001

Respondent

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the
Constitution of India, to set aside the fair and decreetal order dated 28.03.2016
made in IA.No.2541 of 2009 in OS.No.1585 of 2004, by the Principal District
Munsif Court, Coimbatore.

For Petitioner : Mr.S.Mukunth

For Respondent : Mr.J.Jyothi

ORDER

1. This Civil Revision Petition has been filed, to set aside the fair and decreetal
order dated 28.03.2016, made in IA.No.2541 of 2009 in OS.No.1585 of 2004,
by the Principal District Munsif Court, Coimbatore.
2. The facts of the case, in a nutshell, leading to filing of this Civil Revision
Petition are as follows:-

(a) The Plaintiff in OS.No.1585 of 2004 is the Revision Petitioner herein and the Respondent is the Defendant. The said suit was filed for recovery of money with interest. In the suit, an exparte decree, dated 26.10.2004 was passed. Thereafter, execution proceedings were initiated. In the year 2009, the Defendant has filed IA.No.2541 of 2009 in OS.No.1585 of 2004, on the file of the Principal District Munsif, Coimbatore, to condone the delay of 1818 days in filing the Petition to set aside the said exparte decree. In and by the impugned order, dated 28.03.2016, the court below has allowed the said IA on payment of cost of Rs.3,000/-. Hence, this Civil Revision Petition has been filed by the Plaintiff.

3. This court heard the learned counsel on either side.
4. The learned counsel for the Petitioner/Plaintiff has submitted that the reasons assigned by the Respondent/ Defendant to condone such a huge delay are untenable and that the Defendant has not produced any document to prove that he was suffering from medical ailments, viz. neuro problem, head ache from 2004 to 2009 and that there was no proper and satisfactory explanation given for each and every day's delay, given by the Defendant to condone the delay. He has further contended that the court below erred in allowing such a huge delay, without any valid reason being assigned by the Defendant and hence, this Civil Revision Petition is to be allowed.
5. The learned counsel for the Respondent/ Defendant has submitted that the delay is neither wanton nor purposive and that the delay had occurred due to

his long standing medical ailment, for which he had underwent a major surgery and that only due to his inability and lack of good health, he was not able to follow up the case and thus, the delay had occurred and that in order to meet the principles of natural justice, the court below has rightly condoned the delay and this Civil Revision Petition is to be dismissed. He would further submit that a direction may be given to dispose of the suit as early as possible.

6. This Court has given its anxious consideration to the submissions of the learned counsel on either side and also carefully perused the materials placed on record.
7. It is seen from the records that the suit was decreed ex parte on 26.10.2004. The Defendant has filed the petition to condone the delay of 1818 days in the year 2009. The only reason assigned by the Defendant to condone the delay is that he was suffering from medical ailments, such as, head ache, surgery done in 2009.
8. On a careful perusal of the impugned order, this Court finds that the court below has given categoric findings to the effect that the medical documents relied on by the Defendant relate to 2009. The court below has also given further findings that there are no medical records prior to 2009 and that it is the duty of the litigant to follow up the case and that merely claiming orally that the Defendant was suffering from head ache since 2004 could not be legally accepted and that ultimately the evidence and documents are not

adequate and do not make out sufficient cause and that there were no merits in the petition. However, on the ground of principles of natural justice, the delay was condoned on payment of cost.

9. The court below, having given such findings elaborately against the Defendant, particularly, when having come to the conclusion that the Defendant had not shown sufficient cause to condone the delay, the court below ought to have dismissed the said IA and the court below miserably erred in condoning the delay, as this Court also finds that the reasons assigned by the Defendant are far from truth and unbelievable and there are no documents available between 2004 to 2009, the period where delay was occasioned and do not show sufficient cause to condone the delay. Further, having given such findings in favour of the Plaintiff, this Court is of the considered view that the court below ought not to have exercised its discretion in favour of the Defendant to condone such an inordinate delay in the absence of valid evidence. In such view of the matter, the impugned order is liable to be set aside.

10. In the result, this Civil Revision Petition is allowed. No costs. Consequently, the connected MP is closed.

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

Srcm

To

1. The Principal District Munsif, Coimbatore

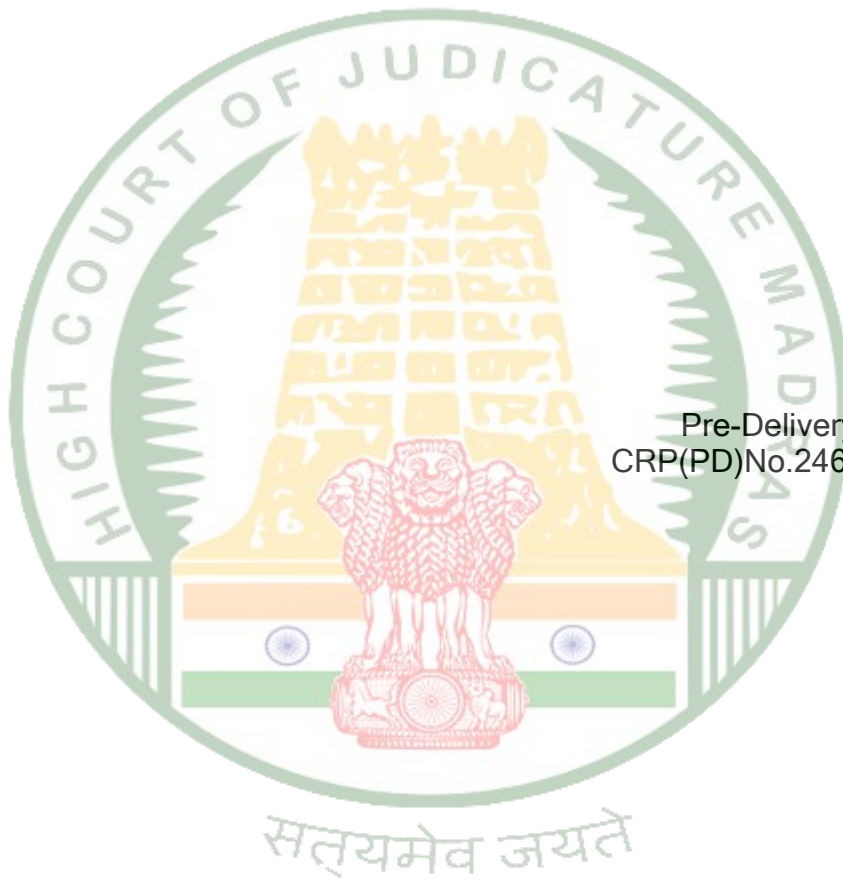
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A.A.NAKKIRAN, J.

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Pre-Delivery Order in
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