

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.1485 of 2016

and

CMP.No.8166 of 2016

P.N.Krishnan

...

Petitioner

Vs.

R.Shanmugaraj

...

Respondent

PRAYER : The Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and final order made in I.A.No.758 of 2014 in O.S.No.670 of 2008, dated 17.02.2016, on the file of the V Additional District Session Judge, Coimbatore.

For Petitioner : Mr.R.Rajivgandhi

For Respondent : Mr.Venkatasubban for

M/S Saryabhauman Associates

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed challenging the order of the learned Fifth Additional District Session Judge, Coimbatore dated 17.02.2016 made in I.A.No.758 of 2014 in O.S.No.670 of 2008.

2. The petitioner is the defendant.

3. The respondent/plaintiff has filed a suit against the petitioner for specific performance. Since the petitioner was absent on the date of the hearing, an *ex parte* decree was passed on 04.01.2014. Thereafter, the petitioner has filed a petition to set aside the *ex parte* decree after an inordinate delay of 224 days, along with a petition to condone the said delay. The condonation petition was dismissed by the learned trial Judge. Aggrieved over that the petitioner has preferred this revision.

4. Heard the submissions made by both side learned counsels and perused the materials available on record.

5. The learned counsel for the petitioner submitted that the petitioners' valuable right would be lost if is not given an opportunity to contest the suit and in the matters of condoning the delay in setting aside the *ex parte* decree, the Court should consider the interest of justice and take a liberal view.

6. The learned counsel for the respondent submitted that the callous attitude of the petitioner is writ large in the very affidavit filed by him for condoning the delay. The attention of this Court was invited to the decision rendered in

N Balakrishnan V/s M Krishnamurthy [1998 7 SCC 123] and in Venkatesan Assary V/s Prakash Mull Chordia, Rep. by Power of Attorney J.S.Sundar [2002 1 CTC 157].

7. In the above said judgments, it has been held that the petitioner has got a duty to explain each and every day's delay and such delay could be considered favourably only if the petitioner shows genuine and satisfactory reasons. The petitioner has stated that she was suffering from ill health and he has been taking treatment at Kerala for some time. The said reasons stated to condone the long delay of 224 days are something not acceptable.

8. After passing the decree in the suit, the execution of the same has not yet given effect to and the matter is standstill without any change of circumstances. In view of the same and in the interest of substantial justice, I feel that the petition should be allowed by showing a liberal approach. At the same time the hardship suffered by the respondent cannot be ignored and for which the petitioner should pay costs. In the interest of justice and in order to give one more opportunity to the petitioner to contest the suit on merits. I feel this Civil Revision Petition can be allowed on payment of costs of Rs. 10,000/- to be deposited in the Trial Court.

In the result, the impugned order made in I.A.No.758 of 2014 in O.S.No.670 of 2008, dated 17.02.2016, on the file of the V Additional district Session Judge, Coimbatore is set aside and the Civil Revision Petition is **allowed** subject to payment of costs of Rs. 10,000/-[Rupees Ten Thousand only], which is to be deposited in the Trial Court by the petitioner within a period of two weeks from the date of receipt of copy of this order and on such deposit being made, the respondent is at liberty to withdraw the same by filing appropriate application. Taking into consideration of the long pendency of the suit, the learned Trial Judge is directed to expedite the trial and dispose off the case preferably within a period of three months by posting it on a day to day basis. Consequently, connected civil miscellaneous petition in CMP.No.8166 of 2016, is also closed.

सत्यमेव जयते

13.07.2021

Speaking/Non-speaking

Index : Yes/No

Internet : Yes/No

jrs

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To

1.The V Additional District Session Judge,
Coimbatore

2.The Section Officer,
V.R.Section,
High Court, Madras.



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R.N.MANJULA,J.

jrs



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