



C.R.P.No.1205 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

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THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.R.P.(NPD) No.1205 of 2019

[Hybrid Model]

K.Devaraj

...Petitioner

Vs.

K.Premkumar

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 10.09.2018 dismissing the petition filed under Section 5 of the Limitation Act r/w. Section 151 CPC in I.A.No.2226 of 2014 in O.S.No.1515 of 2013, passed by the Hon'ble Principal District Munsif, Coimbatore.

For Petitioner	: Ms.Gayathri for M/s.P.Maheshkumar
For Respondent	: Mr.C.Gunasekar

ORDER

The Civil Revision Petition is filed against order dated 10.09.2018 in I.A.No.2226 of 2014 in O.S.No.1515 of 2013.



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2. The respondent herein filed a suit for permanent injunction restraining the revision petitioner or his agents, attorneys, assignees, legal heirs or others from interfering with the actual, physical possession and peaceful enjoyment of the suit property by the plaintiff/respondent and not to put up any construction in the suit property. The suit was decreed ex parte on 04.04.2014. Thereafter, the revision petitioner filed an application to set aside the ex parte decree along with a petition to condone the delay of 129 days. The petition filed under Section 5 of the Limitation Act, 1963 in I.A.No.2226 of 2013 was dismissed by the trial Court. Aggrieved by the same, the aforesaid Civil Revision Petition is filed.

3. It was contended before the lower Court by the revision petitioner that he did not receive summons. However, the lower Court has recorded as if the petitioner has not disputed the fact that the summons were duly served upon him through his wife. It is the case of the revision petitioner that he came to know about the ex parte decree only when the plaintiff had informed the local police station. However, the Lower Court has observed that the petitioner's plea is not supported by any piece of evidence.



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4. The lower Court did not consider the case of the petitioner. While taking up the petition to condone the delay, the Court is expected to appreciate the facts. If the reason stated is probable to excuse the delay, the Court may not hesitate to accept. The specific reason to condone the delay is stated in the affidavit filed by the petitioner before the lower Court. However, the Court, on an erroneous appreciation of fact proceeded with an impression that the petitioner himself has admitted that he was served with summons and dismissed the petition, as if the revision petitioner did not give any reason for condoning the delay.

5. This Court is unable to accept the view of the lower Court. As pointed out earlier, the Court should always be lenient in condoning the delay, if it is not on account of any recalcitrant attitude or misconduct of the party to the lis. This Court in this case, is unable to find any callous indifference or negligence on the part of the revision petitioner. Considering the nature of suit filed in this case and the pleadings, this Court is also of the view that the revision petitioner should be given a fair opportunity to defend the suit on merits and hence, this Court is inclined to



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allow the revision petition. Accordingly, the revision petition is allowed and the order dated 10.09.2018 in I.A.No.2226 of 2014 in O.S.No.1515 of 2013 is set aside. The petition in I.A.2226 of 2014 in O.S.No.1515 of 2013 is allowed. No costs.

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Index: Yes/No

Speaking order/Non-speaking order



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S.S.SUNDAR, J.,

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To

Principal District Munsif,
Coimbatore.

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