

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2021

CORAM

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

C.R.P.(NPD).No.4097 of 2016

Pavunraj

... Petitioner/Plaintiff

Vs.

1.Kasinathan

2.Ganesan @ Ravi

... Respondents/Defendants

Prayer: This Civil Revision Petition is filed under Section 115 CPC against the fair and decretal order of the learned Principal District Munsif, Cuddalore, dismissing I.A.No.154 of 2016 in O.S.No.106 of 2011 by order dated 27.07.2016, dismissing the application.

For Petitioner : Mr.R.Gururaj

For Respondents : No Appearance

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed to set aside the fair and decretal Order dated 27.07.2016 passed in I.A.No.154 of 2016 in O.S.No.106 of 2011 by the learned Principal District Munsif, Cuddalore.

2. This Civil Revision Petitioner was the plaintiff in the suit.

3. The suit was filed for the relief of declaration and permanent injunction. Since the plaintiff was absent for the hearing, the suit was dismissed for default. Later when he filed the petition to restore the suit by setting aside the Order of dismissal, there occurred a delay of 212 days. So the petitioner filed a petition to condone the delay of 212 days by way of filing a petition under Section 5 of the Limitation Act to condone the delay. The learned trial Judge having not satisfied with the reasons stated for the delay, had dismissed the same. Aggrieved over that, the petitioner has filed this Civil Revision Petition.

4. In the impugned Order, it has been observed by the learned trial Judge that the plaintiff was present but he was not ready to proceed with the trial on the day of hearing and further, he has not stated any acceptable reason to condone the long delay.

5. The learned counsel for the petitioner submitted that even the defendant was not present and he has not even chosen to file any counter for the petition filed under Section 5 of the Limitation Act.

6. Just because the respondent has not filed any counter, the Court cannot abstain itself from passing an Order on merit by considering materials available on records. The learned trial Judge has recorded that the plaintiff was present when the suit was called but he was not prepared to conduct the case. It must be probably because of non-availability of his counsel or his counsel might not have prepared for the case. The learned trial Judge did not record any reason as to why the plaintiff could not proceed to participate in the trial despite he was present. Had the plaintiff was not interested in the case, he would not have made his appearance. So it is obvious that because of some other problems like non-availability of his lawyer etc., he could not participate in the trial.

7. Since the suit is filed for the relief of declaration and injunction, an opportunity has to be given to the petitioner for the purpose of restoring the suit and to get it disposed on merits. At the interest of justice, I feel that this petition has to be approached liberally. However, the Court cannot overlook the delay and hardship caused to the respondent due to the unwillingness on the part of the plaintiff to conduct the suit diligently. Hence, I feel that an opportunity has to be given to him, if he pays a reasonable cost to the respondent.

R.N.MANJULA,J.

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In the result, this Civil Revision Petition is allowed and the Order dated 27.07.2016 passed in I.A.No.154 of 2016 in O.S.No.106 of 2011 by the learned Principal District Munsif, Cuddalore is set aside, subject to payment of cost of Rs.5,000/- [Rupees Five Thousand only] which is to be deposited in the Principal District Munsif Court, Cuddalore within a period of two weeks from the date of receipt of a 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 of the case preferably within a period of three months by posting it on a day to day basis.

16.07.2021

Speaking/Non-speaking
Index: Yes/No

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To

1.The Principal District Munsif,
Cuddalore

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

C.R.P.(NPD).No.4097 of 2016