

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2021

CORAM

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

C.R.P.(NPD).No.865 of 2016
and C.M.P.No.4799 of 2016

S.Elango

... Petitioner/Plaintiff

Vs.

L.Thandavarayan

... Respondent/Defendant

Prayer: The Civil Revision Petition filed under Article 115 of C.P.C., against the order and decretal order dated 05.01.2016 passed in I.A.No.143 of 2015 in O.S.No.55 of 2010 on the file of the District Munsif Court cum Judicial Magistrate No.1, Walajapet, Vellore District.

For Petitioner : Mr.R.Ramesh

For Respondent : No appearance

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 05.01.2016 passed in I.A.No.143 of 2015 in O.S.No.55 of 2010 by the District Munsif Court cum Judicial Magistrate No.1, Walajapet, Vellore District, and allow the above C.R.P.

2. The petitioner is the plaintiff.

3. The suit O.S.No.55 of 2010 was filed for the relief of declaration and mandatory injunction. The plaintiff failed to make his appearance when the suit was listed. Despite a few adjournments were given thereafter at request, he failed to prosecute the case. In such circumstances, the learned trial Court has dismissed the suit for default. After a delay of 443 days, the petitioner/plaintiff has filed a petition to set aside the Order of dismissal and to restore the suit along with a petition to condone the delay in filing the petition to restore the suit. The learned trial Judge has rendered a finding that the reason stated by the petitioner to condone the inordinate delay of 443 days was not satisfactory. It is further observed that the records produced by the petitioner would show that he was on medical leave only for 20 days and that cannot be considered as an acceptable reason to condone the delay of 443 days. The petitioner who is said to be a Physical Education Teacher in a Government Higher Secondary School would have been very much available locally as he had to attend his school every day. And he cannot be ignorant of the delay that continued to occur due to his failure to take prompt action.

4. The defendant is said to be a senior citizen. The suit has been filed in

the year 2010. The suit itself had been listed only after 3 years. Even at that time, the plaintiff did not mark his presence for initiating the trial and allowed the suit to be dismissed for default. Despite the learned trial Judge granted a few adjournments, the petitioner did not turn up.

5. Though the Court should not be too technical in condoning the delay of this nature, the Court also should not ignore the hardship caused to the defendant. In this case, the defendant is a senior citizen and he could not be allowed to wait for years at the whims of the petitioner. Though the reason assigned by the petitioner for condoning the delay is not acceptable, an opportunity on cost to participate in the trial in order to conclude the case on merit can serve the ends of justice.

6. Hence this Civil Revision Petition is allowed on payment of cost of Rs.20,000/- to the respondent within a period of one week from the date of receipt of a copy of this Order, failing which, the petition will stand dismissed. The cost has to be paid to the respondent directly and the receipt of the same has to be produced before the learned trial Judge. On receiving the same, the trial

R.N.MANJULA,J.

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judge shall restore the suit and conclude the trial within 3 months. No costs.

Connected civil miscellaneous petition is closed.

18.06.2021

Speaking/Non-speaking
Index : Yes/No

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To

1.The District Munsif Court cum Judicial Magistrate No.1,
Walajapet,
Vellore District.

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



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