

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P (NPD) No.4078 of 2018

and

C.M.P.No.22555 of 2018

Balasubramaniam ... Petitioner

Vs.

Arokiyasamy ... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the order and decree dated 04.10.2018 made in I.A.No.1562 of 2018 in O.S.No.174 of 2012 on the file of the District Munsif Court, Pappireddipatti by allowing this Civil Revision Petition.

For Petitioner : Mr.R.Rajaramani

For Respondent : Mr.G.Mutharasu

ORDER

सत्यमेव जयते

This Civil Revision Petition is filed as against the fair and decretal order passed in I.A.No.1562 of 2018 in O.S.No.174 of 2012 dated 04.10.2018 on the file of the learned District Munsif, Pappireddipatti, thereby dismissing the petition to condone the delay of 528 days in filing the application to set aside the ex-parte decree.

2. The petitioner is second defendant and the respondent is the plaintiff. The respondent filed a suit for declaration and recovery of possession in respect of the suit properties. On receipt of suit summons, the petitioner failed to appear before the Trial Court and as such, he was set ex-parte. On the strength of the ex-parte decree, the respondent filed an Execution Petition in E.P.No.5 of 2017. In the said Execution Petition, the petitioner was served notice and immediately, he filed vakalat and entered appearance on 09.06.2017. Thereafter, on 11.09.2017, he filed a counter and also filed the petition to set aside the ex-parte decree with a delay of 528 days.

3. On a perusal of the affidavit filed in support of the condone delay petition, it reveals that the petitioner fell ill due to Chikungunya and as such, he was bed ridden. He further stated that he has got good case to defend the suit filed by the respondent herein. However, the Court below dismissed the petition for the reason that he entered appearance in the Execution Petition on 09.06.2017, whereas, he filed a petition to set aside the ex-parte decree only on 11.09.2017. The Trial Court had adopted very stringent approach and dismissed the petition to condone the delay of 528

days in filing the application to set aside the ex-parte decree.

4. The Hon'ble Supreme Court of India and this Court have repeatedly pointed out that the Court must be liberal in matters of delay, unless prejudice to the opposite party or lack of due diligence and bona-fides on the part of the petitioner, is established. This Court finds no prejudice being caused to the opposite party by allowing the petition to condone delay in filing the petition to set aside the ex-parte decree. That apart, the petitioner has got good case to defend the suit and as such, this Civil Revision Petition is allowed and the order passed in I.A.No.1562 of 2018 in O.S.No.174 of 2012 dated 04.10.2018 is hereby set aside on condition that the petitioner shall pay a sum of Rs.5,000/- as costs to the respondent within a period of two weeks from the date of receipt of a copy of this order, failing which this order shall stand automatically cancelled. The trial Court is directed to dispose of the suit within a period of 12 months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

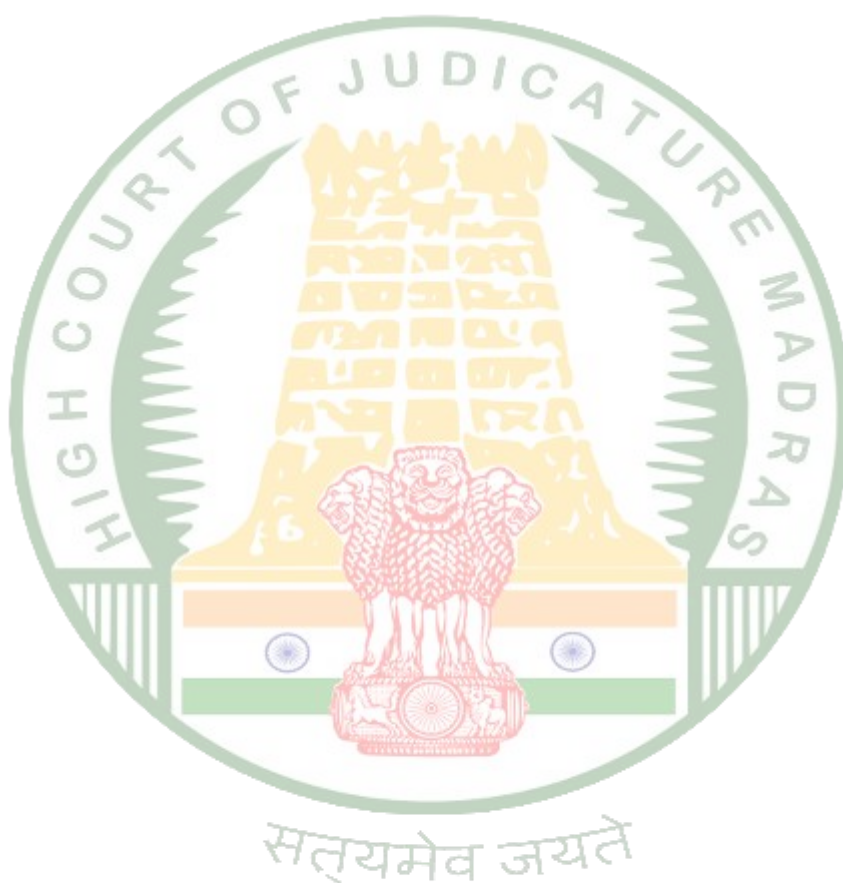
1. The District Munsif Court, Pappireddipatti.
2. The Section Officer,
V.R. Section, High Court of Madras.



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