



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.02.2021

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (NPD) (MD) .No.225 of 2021

and

C.M.P (MD) .No.1350 of 2021

S.Mohammad Hanifa ... Petitioner/ Petitioner/Appellant

Vs.

Ramar ... Respondent /Respondent/Respondent

PRAYER:- This Civil Revision Petition has been filed under Section 115 of C.P.C, to set aside the fair and decreetal order passed in I.A.No.83 of 2018 in unregistered appeal suit dated 08.08.2019 on the file of the Sub Court, Tirunelveli by allowing this Civil Revision Petition.

For petitioner : Mr.H.Arumugam

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order passed in I.A.No.83 of 2018 in unregistered appeal suit dated 08.08.2019 on the file of the Sub Court, Tirunelveli by allowing this Civil Revision Petition.

2.The case of the petitioner is that the petitioner has filed the suit in O.S.No.72 of 2011 on the file of the I Additional District Munsif, Tirunelveli, for permanent injunction restraining the respondent from interfering with his peaceful possession in the suit property where the respondent filed a written statement. The said suit was dismissed on 24.10.2013. The petitioner obtained the copy of the Judgment and Decree on 11.01.2018. Since the Judgment and Decree has been passed on 24.10.2013 itself, an appeal should have been filed within 23.11.2013. However, due to knee problem, the petitioner could not move about and has taken Ayurvedic Medicine in a private hospital at Kumaragam in Kerala. Due to that, the petitioner was unable to file an appeal within time, for which, there was a delay of 1326 days in filing the appeal. Hence, the petitioner filed an Interlocutory Application in I.A.No.83 of 2018 to condone the delay of 1326 days in filing



the Appeal. After hearing the case, the learned Judge has dismissed the said application, against which, the petitioner has filed the present Civil Revision Petition.

3. Heard the learned counsel for the petitioner and perused the materials available on record.

4. Perusal of record shows that the petitioner has filed the suit in O.S.No.72 of 2011 against the respondent for permanent injunction, after hearing the case, the suit was dismissed. Thereafter, the petitioner filed an Interlocutory Application in I.A.No.83 of 2018 with a delay of 1362 days in filing the appeal, in which, the petitioner has stated that he was suffering from Knee problem and took treatment at Kerala and therefore, he was not aware of the Judgment and Decree passed in the main suit. Only recently he contacted his Advocate and came to know about the dismissal of the suit and thereafter, he filed copy application and obtained copies belatedly, due to that, there was a delay of 1362 days in filing the appeal. The learned Judge finding that the petitioner has not even filed a single piece of evidence to prove that he took treatment at Kumaragam in Kerala. Therefore, the petitioner has not come before this Court with clean hands and only within an intention to drag on the proceedings, the petitioner has filed the petition belatedly and no acceptable reason has been stated by the petitioner for the delay of 1362 days in filing the appeal, therefore, the learned Judge has rightly dismissed the said application in I.A.No.83 of 2018 to condone the delay which does not warrant any interference from this Court.

5. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

msa

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To

The Subordinate Judge,
Tirunelveli.

+1 CC to Mr.H.ARUMUGAM, Advocate (SR-6151[F] dated 19/02/2021)

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