



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. (MD) No.1391 of 2014

WEB COPY

1. Irudhayaraj

2. Santhosh kani

... Petitioners/Petitioners/Plaintiffs

-Vs-

1.Venseslas

2.Alexander

... Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the order passed in I.A.No.60 of 2013 in O.S.No.144 of 2010 on the file of the District Munsif cum Judicial Magistrate, Shencottah dated 24.02.2014.

For Petitioners : Mr.S.A.Ajmal Khan
For R2 : Mr.D.Venkatesh
R1-died

O R D E R

This Civil Revision Petition has been filed seeking to set aside the order dismissing the petition to condone delay of 212 days in filing the application to restore the suit.

2. The learned counsel for the petitioners would submit that the petitioners are the plaintiffs in O.S.No.144 of 2010 on the file of the District Munsif cum Judicial Magistrate, Sengottai filed for declaration and mandatory injunction against the first respondent. He would further submit that the suit was listed in the special list on 03.04.2012 and on that due to brake down of the bus the petitioner was unable to reach the Court within time. Meanwhile the case had been called and finding that the petitioners were not present before the Court the trial Court dismissed the suit for default. It was informed to the petitioners by their counsel . However the first petitioner was on important work and he was unable to file restoration application within specified time and there had been delay of 212 days. The petitioner had filed restoration application along with the petition to condone delay of 212 days, where as the trial Court holding that the petitioner had not shown sufficient cause had dismissed the same. The learned counsel for the petitioner submitted that delay was only 212 days and the petitioner had shown sufficient cause, whereas the trial Court without taking into consideration that the substantial right of the petitioner is



involved in this case and without adopting pragmatic approach in matters regarding condonation of delay had dismissed the application. He would further submit that the trial Court ought to have allowed the petition on fixation of terms and costs, against which the present revision is filed.

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3.The learned counsel for the respondents would submit that the petitioners are the plaintiffs in the suit. The suit was listed in special list on 03.04.2012. Since the petitioners did not appear before the Court, the suit was dismissed on the same day. It is the case of the petitioners that he had come to Court after two hours and that he was informed by his counsel about the dismissal of the suit and since he went out of station on the some work, he was unable to file application for restoration with the time . The trial Court finding that the petitioner is employed in the State Transport Corporation as a driver and finding that the petitioner had not taken any leave after 03.04.2012 and holding that the petitioner had filed false affidavit in the Court had dismissed the petition. Further the petitioner during enquiry had stated that his wife was not feeling well and the trial Court find that no supporting documents were also filed regarding the same had dismissed the petition to condone the delay in filing the petition for restoration. He would further submit that trial Court had rightly found that the reasons stated by the petitioners were not genuine had dismissed the petition. There is no error or infirmity in the order passed by the learned trial Judge, hence he seeks dismissal of the petition.

4.Heard the learned counsel appearing on either side and persued the materials available on record.

5. It is the admitted case of the plaintiffs that the case was listed in the special list on 03.04.2012 and that since his bus which he had travelled got broke down he reached the court with a delay of two hours. In the meanwhile the case has been called for and dismissed for default. He had enquired his counsel and he was informed about the same and thereby he had knowledge of the dismissal of the suit. It is the further case of the plaintiffs that due to some other work he went out of station and thereby there had been a delay of 212 days in filing the petition for restoration of the suit. The trial Court finding that the petitioner is a driver in the transport corporation and that no proof had been filed by him to show that he had gone out of station and that was leave was granted by the transport corporation by holding that the petitioner had filed false affidavit before the Court had dismissed the petition. During enquiry the petitioner had taken yet another ground that his wife was sick. Finding that the petitioner had not filed any affidavit



to prove the same, the trial court had held that the petitioners had not come out with truth and had dismissed the petition.

6. This Court does not find any error or infirmity in the order of the trial court passed in I.A.No.60 of 2013 in O.S.No.144 of 2010 on the file of the District Munsif cum Judicial Magistrate, Shencottah dated 24.02.2014. Hence, this revision stands dismissed. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

CM

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.

To:

1.The District Munsif cum Judicial Magistrate,
Senkottai.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P. (MD) No.1391 of 2014
13.09.2021

PS (CO)
SB(28.09.2021) 3P 4C