



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

C.R.P. (PD) (MD) No.2639 of 2014

P.Subramania Chettiar

... Petitioner/1st Respondent/
1st Defendant

versus

1.S.Natarajan : 1st Respondent/Petitioner/Plaintiff

2. Arunachala Vadivu

3. R.Velumuthu

4. R.Selvaraj

5. S.Kannan : Respondents 2 to 5/Respondents/
Defendants 2 to 5

Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreeal order dated 20.06.2014 passed in I.A.No.540 of 2013 in O.S.No.47 of 2006 on the file of the District Munsif Court, Tiruchendur.

For Petitioner : Mr.G.Rajaraman

For Respondents : Mr.H.Arumugam for R1, R3 to R5

ORDER

The first defendant in O.S.No.47 of 2006 has come up with this Civil Revision Petition.

2. The challenge is to the order of the trial Court, restoring the application in I.A.No.333 of 2008 filed by the plaintiff, seeking restoration of the suit that was dismissed for default on 09.04.2008.



3. According to the first respondent/plaintiff, the suit was dismissed for default on 09.04.2008. An application in I.A.No.333 of 2008 was filed by him seeking restoration of the suit. The said application came to be dismissed for default on 21.09.2008. An application to restore the application seeking restoration of the suit was filed on 10.02.2009 within the time allowed under law. It appears that the said application was returned on 11.05.2010 by the trial Court. It is stated that the said returned application was represented on 20.07.2010. However, though the said representation was registered in 19-Register, the said application was neither numbered nor returned again. Claiming that the papers in that application are not traceable, the plaintiff has come up with the instant application, seeking to restore I.A.No.333 of 2008.

4. This application was resisted by the defendants contending that the plaintiff has slept over his rights for more than three years and as such, he is not entitled to any relief. The claim that the re-presented application was not available in the Court, was also disputed. It was also claimed that the plaintiff cannot file a fresh application for restoration, without an application for condonation of delay.

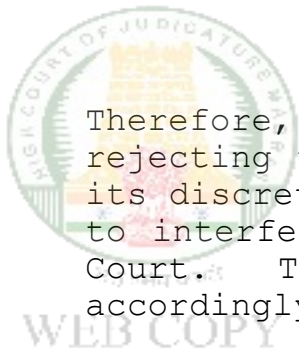
5. The learned trial Judge, after considering the averments in the affidavit and the counter affidavit, found, as of fact, that the allegations made in the affidavit filed in support of the petition in I.A.No.540 of 2013 are true. The learned trial Judge recorded the fact that though the application was filed and it was re-presented, the papers were not available in the Registry of the Court. The learned trial Judge applied the principle of law that no one should be prejudiced for the act of Court, allowed the application and restored I.A.No.333 of 2008 on condition that the plaintiff pays a sum of Rs.500/- as costs.

6. I have heard Mr.G.Rajaraman, learned counsel for the petitioner/first defendant in the suit.

7. Mr.G.Rajaraman, learned counsel for the petitioner would vehemently contend that there is no explanation for the delay of three years in filing the application. Therefore, the trial Court was not right in allowing the application.

8. I have considered the submissions of the learned counsel for the petitioner.

9. From the facts narrated above, it is crystal clear that some mistake happened before the trial Court and the papers in the application filed to restore the application in I.A.No.333 of 2008 were neither returned nor numbered for a long time. It is quite natural for the Litigants to wait for the papers to be traced by the Court, when the papers go missing in the Registry of the Court.



Therefore, I do not think, the delay alone could be the reason for rejecting the plaintiff's application. The trial Court had applied its discretion and allowed the application. I do not see any reason to interfere with the said exercise of the discretion of the trial Court. Therefore, the Civil Revision Petition fails and it is accordingly dismissed. No costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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

The District Munsif,
Tiruchendur.

+1 CC to Mr.H.ARUMUGAM, Advocate (SR-755[F] dated 11/01/2021)

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