



CRP.NPD.No.639/2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.NPD.No.639/2019 & CMP.No.4259/2019

[Virtual Mode]

Thalapathi

.. Petitioner

Vs.

1.Church of South India Trust Association
Trichy, Thanjavur Diocesan Council
rep.by its Power of Attorneys
Diocesan Treasurer
Clerical Secretary, Puthur,
Tiruchy 620 017.

2.Ariyalur Pastorate Committee
Church of South India rep.by its
Chairman Presbyter, Ariyalur.

.. Respondents

Prayer:- Civil Revision Petition filed under Section 115 CPC against the fair and final order dated 12.10.2018 passed by the learned Subordinate Judge, Ariyalur, in IA.No.40/2016 in AS.No.8/2010.

For Petitioner	:	Mr.R.Gokulakrishnan
For Respondents	:	Mr.P.Balamurali



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ORDER

- (1) This Civil Revision Petition is directed against the order dated 12.10.2018 made in IA.No.40/2016 in AS.No.8/2010 by the learned Subordinate Judge, Ariyalur, to restore the Appeal which was dismissed for default earlier.
- (2) The revision petitioner herein is the defendant in the suit in OS.No.347/2005 which was filed by the respondents herein for recovery of possession of the suit property and to direct the revision petitioner to pay the arrears of rent as well as damages for use and occupation of the building after termination of the lease.
- (3) The suit was decreed as the Trial Court found no merits in any of the contentions raised by the defendant in the suit. The appeal in AS.No.8/2010 filed before the Sub Court, Ariyalur, was dismissed for default on 16.07.2015 for the non appearance of the revision petitioner herein. As a matter of fact, the learned counsel who appeared on behalf of the revision petitioner before the Appellate Court, reported no instructions and therefore, the suit came to be



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dismissed for default. In the application filed by the petitioner to set aside the order dismissing the suit for default, the petitioner herein has stated that due to personal inconvenience, he did not appear on 16.07.2015. Though the reason shows an indifferent attitude of the petitioner, this Court is unable to sustain the order of the Lower Court as it should be the tendency of the Courts to give fair opportunity to the parties as far as possible to get a decision on merits of course by compensating the other side for the inconvenience caused to the other side.

- (4) It is not the case where the non appearance by the revision petitioner can be termed as a wilful misconduct or abandonment. This Court prima facie finds that the revision petitioner is a tenant, squatting over the property of the respondents herein. The tenancy is admitted and the only defence raised by the revision petitioner is about the loss he may suffer on account of vacating the premises. In such circumstances, this Court is of the view that the respondents should be compensated for the inconvenience caused to them by the delay.



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(5) Accordingly, the Civil Revision Petition is **allowed** and the order dated 12.10.2018 passed by the learned Subordinate Judge, Ariyalur, in IA.No.40/2016 in AS.No.8/2010 is **set aside** and the petitioner is directed to pay a cost of Rs.25,000/- [Rupees Twenty Five Thousand only] to the respondents within a period of two weeks from the date of receipt of a copy of this order only upon payment of costs, the Appeal shall be restored. If the Appeal is restored upon payment of cost, the appellate Court shall dispose of the Appeal in A.S.No.8/2010 within three months. Consequently, connected miscellaneous petition is closed.

06.01.2022

AP

Internet : Yes

To

The Subordinate Judge
Ariyalur.



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S.S.SUNDAR, J.,

AP

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