



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2022

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYANC.R.P.No. 781 of 2021andCMP.No.6530 of 2021

Senthamizhan,

.. Petitioner

Versus

The Commissioner,
Mannargudi Municipality,
Thiruvarur District.

...Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 14.12.2020 made in I.A.No.81 of 2019 in O.S.No. 138 of 2016 on the file of learned District Munsif Court, Mannargudi.

For Petitioner : Mr.M.S. Umesh
(For M.Abbiraami)

For Respondent : P. Srinivas

**ORDER**

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This Civil Revision Petition has been filed by the petitioner herein against the fair and decretal order dated 14.12.2020 made in I.A.No.81 of 2019 in O.S.No. 138 of 2016 on the file of learned District Munsif Court, Mannargudi.

2. The petitioner herein is the plaintiff and the respondent herein is the defendant in the suit in O.S. No.138 of 2016 on the file of the learned District Munsif Court, Mannargudi.

3. The case of the petitioner is that the plaintiff/petitioner herein has filed the suit in O.S. No.138 of 2016 on the file of the learned District Munsif Court, Mannargudi seeking for permanent injunction against the defendant/respondent herein, not to disturb his possession in the suit property. The Trial Court passed the exparte decree and Judgment dated 13.02.2017 due to non-filing of Written statement and non-appearance on the side of the defendant during the proceeding of Trial. Subsequent to the aforesaid exparte decree and Judgment dated 13.02.2017, after a delay of 299 days, the defendant has filed I.A. No.81 of 2019 seeking to set aside



the exparte decree and Judgement dated 13.02.2017 passed by the Trial Court. The Trial Court allowed the aforesaid application with cost of Rs.500/- payable to the defendant by order dated 14.12.2020 in order to give one more opportunity to the plaintiff to contest the suit. Being aggrieved by the aforesaid order, the plaintiff/petitioner herein has filed the present Civil Revision Petition to set aside the same.

4. The learned counsel for the petitioner would submit that the defendant/respondent herein has filed the application in I.A. No.81 of 2019 for condonation of delay of 299 days in filing the aforesaid application to set aside the ex-parte order dated 13.12.2017 passed in O.S. No.138 of 2016 stating that the post of the Commissioner was vacant for long period and recently, the present commissioner has been appointed and as he did know the details of the case, he was not able to file the application to restore the aforesaid suit within a period of limitation. Without giving proper explanation and submitting reliable document for reasons of the delay in filing the aforesaid application, the defendant has stated the aforesaid reasons blindly is not justifiable and liable to be set aside. However, the Trial Court has allowed the said application with cost



of Rs.500/- in order to give one more opportunity to the defendant even though there is no document submitted to support his averment. The respondent has filed the aforesaid application for condonation of delay of 299 days with the intention to drag on the suit proceedings. Hence, the order dated 14.12.2020 passed by the Trial Court in I.A. No.81 of 2019 is liable to be set aside.

5. The learned counsel for the respondent would submit that the post of the Commissioner was vacant for a long period and as the present Commissioner has been appointed recently, the case details was not known to the defendant. Hence, the appropriate application was not filed within a period of limitation. As the plaintiff sought for injunction in the suit property and the said suit in O.S. No.138 of 2018 was decreed without hearing other side, the Trial Court has rightly allowed the application in I.A. No.81 of 2019 enabling the defendant/respondent herein to contest the suit on merit. Hence, there is no interference required in the order dated 14.12.2020 passed by the Trial Court.



6. Heard the learned counsel for the petitioner and the learned counsel for the respondent as well as perused the material available on record.

7. On a perusal of the records, it is seen that the suit in O.S. No.138 of 2016 was filed seeking for permanent injunction against the defendant not to interfere with the possession of the plaintiff/petitioner herein. During the course of Trial, neither the written statement was filed nor the defendant has appeared before the Trial Court. Under such circumstances, the Trial Court passed Ex-parte Decree and Judgment dated 13.12.2017 in favour of the plaintiff/petitioner herein. Even though the defendant/respondent herein has not produced any document to establish the reasons stated in the petition, it is admitted fact that the claim of the plaintiff/petitioner herein over the suit property in Survey No.4231/2 would be decided only after hearing both sides and considering the oral and documentary evidence placed by both parties and hence it is necessary to grant an opportunity to the defendant/respondent herein to contest the suit to decide the issue on merit. However, considering the lack of evidence for the reasons stated in the petition in filing the condonation of



delay application, the defendant/respondent herein is hereby directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) within a period of two weeks from the date of receipt of copy of this order as per the details given below:

1. A sum of Rs.5,000/- (Rupees Five Thousand Only) to the learned counsel for the petitioner herein.
2. A sum of Rs.5,000/- (Rupees Five Thousand Only) to the District Legal Service Authority, Manargudi

and at the same time, the defendant/respondent herein shall file his Written statement before the Trial Court within a period of two weeks from the date of receipt of copy of this order.

8. With the aforesaid directions, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed if any. No Costs.

19.12.2022

Lbm

Index : Yes/No

Speaking Order : Yes/No



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To:

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



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CRP.No.781 of 2021

V. BHAVANI SUBBAROYAN, J.,

Lbm

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and
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