



C.R.P.(NPD).NO.1850 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2022

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.1850 of 2019

and

C.M.P.No.12235 of 2019

Jothimani ...Petitioner/Respondent/Defendant
-V-

Mayilsamy ...Respondent/Petitioner/Appellant

Prayer: Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and final order passed in I.A.No.426 of 2017 in A.S.C.F.R No.7297 of 2017 on the file of the Principal District Judge, Tiruppur, dated 23.04.2019.

For Petitioner : Mr.B.Gopalakrishnan

For Respondent : Not ready in notice



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ORDER

The revision petitioner is the defendant who seeks to challenge the order passed by the Learned Principal District Judge, Tiruppur, in Condoning the delay of 79 days in filing of the appeal against the Judgement and Decree in O.S.No.18 of 2012 passed by the Subordinate Judge, Udumalpet. The brief facts are as follows:

2. The respondent had filed the suit O.S.No.18 of 2012 on the file for the Subordinate Judge, Udumalpet, seeking recovery of money from the defendant which is the refund of the advance amount together with the interest paid under an agreement of sale dated 23.03.2011. The said suit was dismissed after contest by a Judgement and Decree dated 22.11.2016.

3. Challenging the said Judgement and Decree the respondent herein had filed the First Appeal on the file of the Principal District Court at Tiruppur. However, there was a delay of 79 days in filing of the said appeal, the respondent had filed I.A.No.426 of 2017 for condoning the said delay.



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In the affidavit filed in support of the said application the petitioner has stated that he had fallen ill and due to his other personal reasons he was unable to contact his counsel to file the appeal within time.

4. The revision petitioner had resisted this application inter alia denying the contention that the respondent appellant was not ill. The revision petitioner had also contended that in pursuance of the Decree they had deposited the amounts into Court, therefore, the delay ought not to be condoned.

5. The learned District Judge on perusing the records and after hearing the counsels condoned the delay stating that an opportunity should be given to the respondent/appellant to put forward his case and that no serious prejudice has been caused to the petitioner. The petition was also allowed on terms. This order has been challenged before this Court.

6. Heard the learned counsel.



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7. As rightly held by the Principal District Judge, Tiruppur, the appellant has given reasons for the delay. Further he must be given an opportunity to contest the Judgement and Decree passed by the Subordinate Judge, Tiruppur. The delay is just 79 days for which the Principal District Judge has put the plaintiff on terms, no exception can be taken to the order under revision. Hence, the Civil Revision Petition is dismissed. No Costs. Consequently, connected Civil Miscellaneous Petition is closed.

11.02.2022

Internet : Yes/No
Index :Yes/No
Speaking / Non-Speaking
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To
The Principal District Judge, Tiruppur.



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P.T. ASHA, J.

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