



C.R.P.No.3978 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.No.3978 of 2017
and
C.M.P.No.18555 of 2017

R.Somasundaran

...Petitioner

Vs.

E.Ananthavel

...Respondent

Civil Revision Petition has been filed under Article 227 of Constitution of India, praying to set aside the fair and final order dated 22.08.2017 made in I.A.No.152 of 2017 in O.S.No.192 of 2015 on the file of the II Additional District and Sessions Judge, Tiruppur and allow the above Civil Revision Petition.

For Petitioner : Mr.R.Bharathkumar

For Respondent : Mr.K.Myilsamy



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ORDER

WEB COPY This Civil Revision Petition has been filed by the defendant against the plaintiff in O.S.No.192 of 2015 on the file of the learned II Additional District and Sessions Judge, Tiruppur, for the relief of recovery of money from the defendant.

2. The notice was served to the defendant and he has also filed the written statement.

3. When the suit was posted for trial, the plaintiff has not appeared before the trial Court and hence, the suit was dismissed for default on 15.06.2016. Thereafter he filed an application to restore the suit, but there is a delay of 98 days and hence to condone the delay he filed another application stating that his absence on 15.06.2016 was neither wanton nor wilful, but only due to illness, he was unable to appear for trial. The said application was strongly objected by the defendant, stating that no sufficient reason has been stated by the plaintiff for delay in filing the petition and moreover the illness of the plaintiff was also not supported by any medical



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evidence. However, the said application was finally allowed with the cost of Rs.2,000/- by the trial Court. Challenging the said order, the defendant had preferred this civil revision petition.

4. The learned counsel appearing for the defendant/petitioner herein submits that the trial Court has not assigned any reason for condoning the delay and moreover the conduct and behaviour of the plaintiff shows that he is not interested to proceed the trial and the sufficient reason, for the delay, has not been assigned in the affidavit filed in support of the said application and hence, the delay should not be condoned. He further submitted that the plaintiff filed a false affidavit that due to his illness he was not able to appear before the Court, but he appeared before other Courts on the same day. He further draws the attention of this Court to the case law in ***Sathyanarayana vs. T.J.Dhanakoti @ Koti*** reported in ***2017 (3) CTC 151***.

5. By way of reply, the learned counsel for the petitioner submitted that only due to his illness the plaintiff was unable to attend the Court proceedings on that day (15.06.2016).



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6. On perusal of the case law circulated by the learned counsel for the defendant, this Court is of the view that though the ratio laid down in the aforesaid case law is acceptable one, but the same will not apply to the facts of the case on hand, where there is a dispute with regard to starting a partnership. However, in the present case, the suit was filed for recovery of money and the same was contested by the defendant denying the claim of the plaintiff. Therefore, a fair opportunity has to be given to both the parties for adjudicating the issues. Even though the reason is not supported by medical evidence, the plaintiff took steps within three months, which shows that he is having interest to conduct the proceedings.

7. In view of the above, the order of the trial Court is confirmed and this Civil Revision Petition is dismissed. However, the amount of cost ordered by the trial Court is increased and the plaintiff/respondent herein is directed to pay a sum of Rs.5,000/- (Rupees Five Thousand Only) to the learned counsel for the defendant within a period of two weeks from the date of receipt of copy of this order. The trial Court is directed to complete the



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proceedings as expeditiously as possible. Consequently, the connected miscellaneous petition is also closed. There shall be no order as to costs.

18.10.2022

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

nsa

To

1.The II Additional District and Sessions Judge,
Tiruppur.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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T.V.THAMILSELVI,J.

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