



C.R.P. No.4172 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2022

CORAM:

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

C.R.P.No.4172 of 2017

Arumugam Pillai,
S/o. Poomalai Pillai

... Petitioner

Vs.

Sivaprakasam

... Respondent

PRAYER: Civil Revision Petition filed under Sec.115 of Civil Procedure Code, praying to set aside the dismissal order dated 13.04.2017 passed in I.A.No.235 of 2017 in O.S.No. 90 of 2012 by the Sub-Court, Attur.

For Petitioner : Mr.T.Ganesan

For Respondent : Mr.P.Ravishankar

ORDER

The revision petitioner is the defendant in the suit in O.S.No.90 of 2012 on the file of Sub-Court, Attur filed by the plaintiff for the relief of money claim based on the pronote.

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WEB COPY 2. The defendant contested the suit and filed his written statement.

Thereafter, he remain exparte and an exparte decree was passed by the trial judge. Based upon that, the plaintiff filed the execution petition in R.E.P.No. 84 of 2016, thereafter, the defendant preferred an appeal to set aside the exparte decree, however, the delay of 268 days arose. Hence, the defendant filed an application in I.A.No.235 of 2017 and the said application was objected by the plaintiff that there is no sufficient reason to set aside the condonation of delay. The trial court, after considering the submissions, finally held that the petitioner has not adduced any evidence to show that he was bedridden, thereby the delay was happened. Accordingly, the trial judge dismissed the application.

3. Challenging the said findings, the defendant preferred this Civil Revision Petition stating that the trial court failed to take note of the fact that with the old age, he was not able to approach the court and the delay is neither willful nor wanton. Hence, he prayed to set aside the findings of the trial judge.



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4. At the time of argument, the learned counsel for petitioner submitted that the Revision Petitioner is aged about 90 years and he is ready to contest the case because he is denying the amount received from the plaintiff and the signature found in pronote. The learned counsel for respondent submitted that the defendant refused to pay the part of amount also.

5. Considering the fact that as the Revision Petitioner is aged about 90 years old, he is permitted to contest the case during his life time. Therefore, this Court is inclined to set aside the findings of the trial court and the delay is condoned. Accordingly, this Civil Revision Petition is allowed. However, since the suit is pending from the year of 2012, the trial court is directed to dispose the case within a period of three months from the date of receipt of copy of this order. No costs.

16.09.2022

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp
To
Sub-Judge, Attur.



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T.V.THAMILSELVI, J.

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