



CRP(MD)No.1206 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.1206 of 2022
and
CMP(MD)No.5868 of 2022

Subbaiah Nadar

: Petitioner

Vs.

Ramalakshmi

: Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code to call for the records relating to the fair and decreetal order dated 29.03.2022 made in I.A.No.1 of 2021 in A.S.SR.No.3337 of 2021 on the file of the Principal District Court, Tirunelveli and set aside the same.

For Petitioner : Mr.T.Indrachithu

For Respondent : No appearance

ORDER

This revision petition is filed as against the fair and decreetal order passed by the learned Principal District Judge, Tirunelveli, in I.A.No.1 of 2021 in A.S.SR.No.3337 of 2021, dated 29.03.2022.



2.The petitioner is the defendant in the suit in O.S.No.328 of 2015 filed by the respondent / plaintiff before the Additional Sub Court, Tenkasi, in which, he suffered a decree on 04.01.2019. As against the judgment and decree passed in the suit, the petitioner preferred an appeal before the Principal District Court, Tirunelveli, in A.S.SR.No.3337 of 2021, with a delay of 752 days. He has also moved an application in I.A.No.1 of 2021 under Order 41 Rule 3(A) CPC to condone the delay of 752 days in filing the appeal. The learned Principal District Judge, Tirunelveli, by the order impugned, dismissed the said application holding that the petitioner has not assigned any valid reasons. Aggrieved over the same, the petitioner has moved the instant revision.

3.Learned Counsel for the petitioner submitted that the petitioner is an illiterate and that his Counsel has not handed over the papers of the judgment passed by the trial Court in time. That apart, in view of the lockdown imposed by the Government due to Covid-19 outbreak, the petitioner could not file the appeal in time. He is also taking steps to initiate disciplinary proceedings as against the erstwhile Counsel before the Bar Council of Tamil Nadu and Puducherry and he is also prepared to pay any cost to be imposed by this Court for condoning the delay.



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4. Though notice was ordered to the respondent, it appears that the same was returned as refused. The private notice taken by the petitioner was delivered on the respondent and the name of the respondent is also printed in the cause list. However, there is no representation for the respondent. It appears that the respondent has not appeared before the learned Principal District Judge, Tirunelveli, in the proceedings in I.A.No.1 of 2021 in A.S.SR.No.3337 of 2021, as well.

5. This Court considered the submissions made by the petitioner's Counsel and perused the available records.

6. The respondent has filed the suit in O.S.No.328 of 2015 before the Additional Sub Court, Tenkasi, for the relief of mandatory injunction as against the petitioner. The suit was decreed on 04.01.2019. The petitioner preferred the appeal on 01.04.2021, with a delay of 752 days. The trial Court holding that the delay is huge and that the petitioner has not adduced proper reasonings, dismissed the application.



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7.The Hon'ble Supreme Court *In Re: Cognizance for Extension of Limitation* [2022 LiveLaw (SC) 31], has held that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation. Therefore, the period of delay in this case will be 370 days and not 752 days. Though the petitioner has not placed any materials for the action initiated by him as against the Counsel for not having handed over the judgment passed by the trial Court, this Court, considering the period of delay, is inclined to allow this revision with exemplary cost to provide one more opportunity to the petitioner to put forth his case.

8.Accordingly, this civil revision petition is allowed and the order impugned dated 29.03.2022 is quashed, on condition that the petitioner shall pay a sum of Rs.15,000/- [Rupees Fifteen Thousand only] directly to the respondent, within a period of one month from the date of receipt of a copy of this order. On production of the proof of payment, the appeal in A.S.SR.No.3337 of 2021 shall be numbered, if the papers are otherwise in order and shall be disposed of by the learned Principal District Judge, Tirunelveli, in accordance with law.



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There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes

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To

- 1.The Principal District Judge,
Tirunelveli.
- 2.The Additional Subordinate Judge,
Tenkasi.



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B.PUGALENDHI, J.

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