



CRP(PD)(MD)No.1606 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 05.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.1606 of 2022

and

CMP(MD)No.6956 of 2022

Selvan Gnanadhas Dennis

... Petitioner

versus

Gunamoni Perinbadhas Dennis

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the impugned return memo dated 04.04.2022 made in unnumbered interlocutory application in I.A.No.1 of 2021 in O.S.No. 12 of 2021 on the file of the learned Principal District and Sessions Judge, Kanyakumari District, Nagercoil.

For Petitioner : Mr.P.Deepak



CRP(PD)(MD)No.1606 of 2022

ORDER

WEB COPY

This Civil Revision Petition is filed against the docket order dated 04.04.2022 returning an unnumbered interlocutory application filed in I.A.No.1 of 2021 in O.S.No.12 of 2021 on the file of the learned Principal District and Sessions Judge, Kanyakumari District, Nagercoil.

2. The petitioner herein is the defendant in O.S.No.12 of 2021. The suit was filed by the respondent for declaration, declaring that the document registered in No.1919/2002 dated 09.12.2002 before Vadasery Sub Registry as Settlement deed is null and void and declaring that he is the owner of the plaint 'A' schedule property under the settlement deed registered in No.253/2013 of Vadasery Sub Registry dated 01.02.2013. Since the defendant/petitioner herein has not appeared before the trial Court, he was set *ex parte* and *ex parte* order was passed on 27.02.2021. The petitioner/defendant has filed an application in I.A.No.1 of 2021 to set aside the *ex parte* order. The



CRP(PD)(MD)No.1606 of 2022

WEB COPY

said application was allowed by the trial Court on 05.01.2022 with cost of Rs.2,000/- which has to be paid on or before 04.02.2022. Since the defendant/petitioner herein has not paid that amount in time, the said application was closed. The defendant/petitioner, by claiming that due to 3rd wave of corona, lock down was extended and since he was in Chennai, he could not move anywhere, filed an interlocutory application to extend the time to make the payment and restore I.A.No. 1 of 2021 to allow him to represent his case in the interest of justice. However, the trial Court, returned the said application stating that in the application I.A.No.1 of 2021, an order was passed on merits and therefore, there is no reason to interfere with the earlier order of the Court.

3. This Court considered the submission of the learned counsel appearing for the petitioner and perused the materials available on record.



CRP(PD)(MD)No.1606 of 2022

4. The trial Court has allowed the application in I.A.No.1 of 2021 filed to restore the *ex parte* order by imposing a cost of Rs.2,000/-. However, the defendant/petitioner herein failed to pay that amount in time. Therefore, he filed the present application for restoring the I.A. No.1 of 2021.

5. Section 148 of the Civil Procedure Code gives power to the Court for the enlargement of time fixed by it with regard to the doing of an act prescribed or allowed by the C.P.C. The same is extracted as under:

“Section 148 - Enlargement of time

Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, [not exceeding thirty days in total], even though the period originally fixed or granted may have expired.”



CRP(PD)(MD)No.1606 of 2022

6. Considering the facts and circumstances of the case, the Civil

Revision Petition is disposed of by giving liberty to the petitioner to file a fresh application under Section 148 C.P.C. The trial Court shall consider the same on merits and in accordance with law on condition that the defendant/petitioner shall pay a sum of Rs.10,000/- to the respondent/plaintiff. No costs. Consequently, connected miscellaneous petition is closed.

05.08.2022

ogy

Index : Yes / No

Internet: Yes / No.

To

1. The Principal District and Sessions Judge,
Kanyakumari District,
Nagercoil.



WEB COPY



CRP(PD)(MD)No.1606 of 2022

B.PUGALENDHI, J.

ogy

CRP(PD)(MD)No.1606 of 2022

05.08.2022