



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:25.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (NPD) (MD) .No.847 of 2018

and

C.M.P. (MD) .No.3708 of 2018

S.Melbin John

... Petitioner

vs.

S.Melba Jeevi

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 28.11.2014 made in I.A.No.251 of 2014 in O.S.No.212 of 2011 on the file of District Munsif cum Judicial Magistrate Court, Eraniel.

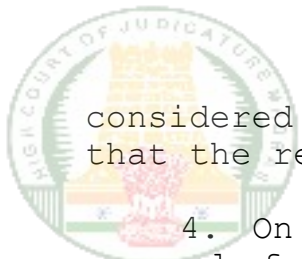
For Petitioner	: Mr.S.C.Herold Singh
For Respondent	: Mr.J.John Jeyakumar

O R D E R

The Civil Revision Petition has been filed against the order passed by the District Munsif cum Judicial Magistrate Court, Eraniel in I.A.No.251 of 2014 in O.S.No.212 of 2011, dated 28.11.2014.

2. The said I.A.No.251 of 2014 was filed by the revision petitioner to condone the delay of 76 days in filing the petition to restore the suit. The Court below after hearing both the parties dismissed the application on the ground that the delay was not properly explained. The main reason assigned by the revision petitioner for condoning the delay in filing the petition to restore the suit was that the lawyer, who handled the matter has not informed the revision petitioner properly and due to the communication gap, the delay of 76 days has occurred. However, the Court below has not considered the same and rejected the application. Therefore, he submitted that the order of the Court below is liable to be dismissed.

3. On the other hand, learned counsel appearing for the respondent submitted that the delay has not been properly explained by the revision petitioner. He is the contesting defendant and he supposed to be vigilance in contacting his counsel. Due to his carelessness, the suit was decreed ex-parte and the same was



considered by the Court below in proper perspective and he submitted that the revision petition is liable to be dismissed.

4. On perusal of the documents and upon hearing the learned counsel for the petitioner as well as the respondent, it appears that there was a delay of 76 days in filing the petition to restore the suit. The reason assigned by the revision petitioner was that his lawyer has not properly communicated with regard to the filing of the written statement and this may not be a proper reason to condone the delay in filing the petition to restore the suit. But, this Court is of the view that in the interest of justice and for a fair adjudication, the delay has to be condoned. Therefore, the order passed by the District Munsif cum Judicial Magistrate Court, Eraniel in I.A.No.251 of 2014, dated 28.11.2014 is set aside and the delay of 76 days in filing the petition to restore the suit is condoned and the Court below is directed to dispose of the application to restore the suit within a period of 30 days from the date of receipt of a copy of this order and thereafter dispose of the suit in O.S.No.212 of 2011 within a period of four months.

5. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

akv

To

The District Munsif cum Judicial Magistrate,
Eraniel.

+1 CC to M/s.J.JOHN JAYAKUMAR, Advocate (SR-14613[F] dated 25/03/2022)

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-14803[F] dated 28/03/2022)

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_RD(07.04.2022) 2P 4C