



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.03.2022**

CORAM:

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (NPD) (MD) .No.641 of 2017

Karuppiyah Konar

... Petitioner / Petitioner/
Plaintiff

vs.

1.Mohideen Andavar Pallivasal
through its Muthavalli,
Aranthangi Town,
Aranthangi Taluk,
Pudukottai District.

2.The Deputy Director,
District Survey Office,
Pudukottai,
Pudukottai District.

3.The Commissioner,
Aranthangi Municipality,
Aranthangi Town,
Aranthangi Taluk,
Pudukottai District.

4.State of Tamil Nadu
through its District Collector,
Pudukottai District.

... Respondents / Respondents/
Defendants

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, 1908, against the order dated 21.11.2016 made in I.A.No.202 of 2011 in O.S.No.165 of 2005 on the file of the District Munsif Court, Aranthangi.

For Petitioner : Mr.R.Suriya Narayanan

For R1 : Mr.N.Balakrishnan

For R2 & R4 : Mr.S.Kameshwaran
Government Advocate

For R3 : Mr.P.Mahendran



O R D E R

The Civil Revision Petition has been filed challenging the order passed by the District Munsif Court, Aranthangi in I.A.No.202 of 2011 in O.S.No.165 of 2005, dated 21.11.2016.

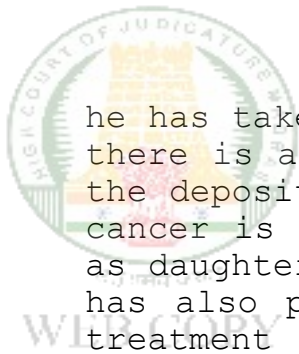
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2. The above I.A.No.202 of 2011 has been filed by the revision petitioner herein to condone the delay of 438 days in filing the application to restore the suit in O.S.No.165 of 2005, which was dismissed for default on 24.10.2009.

3. Originally the suit was filed by the revision petitioner/plaintiff for permanent injunction against the respondents and the same was posted for trial on 19.10.2009. The revision petitioner/plaintiff appeared in person before the Court below on 19.10.2009 and took time. At his request, the suit was adjourned to 24.10.2009. But, on the said date, the petitioner was not able to appear before the Court below for the reason that his grand daughter viz., Sathya was affected with cancer and since he was fully involved for taking her treatment, he was not able to provide any instruction to his counsel. Hence, his counsel reported to the Court, when the matter came up for hearing on 24.10.2009, that he has no instruction. Recording the same, the Court below has dismissed the suit. Thereafter, the I.A.No.202 of 2011 was filed to condone the delay of 438 days in filing the application to restore the suit. However, the Court below has rejected the contention of the petitioner stating that in the affidavit he has stated that Sathya is his daughter and on the other hand, at the time of examination, he has stated that the said Sathya is his grand daughter and there was a contradiction, on that basis, the Court below has not trusted the evidence of the petitioner and rejected the application.

4. The learned counsel appearing for the respondents submitted that there was a contradiction in the averments made in the affidavit and the oral evidence. That apart, if at all if he informed, his lawyer would have informed the Court and in such cases, if anybody citing the reason for cancer, no Court would have proceeded to dismiss a suit for default. It is purely on the part of the revision petitioner and that is the reason why the Court below has rejected the application to condone the delay in filing the restoration application. Hence, he prayed for dismissal.

5. Upon hearing the submission of the learned counsel for the petitioner as well as the learned counsel for the respondents and on perusal of the records, it is seen that the suit was dismissed for default on 24.10.2009 for the non-appearance of the revision petitioner before the Court below. Counsel for the plaintiff reported before the Court below that he has no instruction. But the fact remains that the plaintiff was absent, due to the reason that



he has taken the grand daughter for the cancer treatment. Of course, there is a contradiction in the averments made in the affidavit and the deposition. The name of the grand daughter, who is affected with cancer is Sathya. But the revision petitioner has wrongly mentioned as daughter in the affidavit. This is only a typographical error. He has also produced the documents before the Court below for taking treatment to the grand daughter. These aspects were not considered by the Court below. Therefore, this Court is not in a position to accept the reasons provided by the Court below for rejecting the condone delay application. So, this Court is of the view that for the interest of justice and for fair adjudication, the delay of 438 days is to be condoned.

6. In the result, the Civil Revision Petition is allowed and the order passed by the District Musif Court, Aranthangi in I.A.No.202 of 2011 dated 21.11.2016 is set aside. Since the matter is pending from 2005, this Court directs the District Musif Court, Aranthangi to dispose of the suit in O.S.No.165 of 2005, within a period of six months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To
The District Munsif,
Aranthangi.

COPY TO:
The Registrar(Judicial),
Madurai Bench of Madras High court, Madurai.

+1CC to M/s.R.SURIYANARAYANAN,Advocate(SR-12819[F] dated 17/03/2022)
+1 CC to M/s.P.MAHENDRAN, Advocate (SR-12867[F] dated 18/03/2022)

ORDER MADE IN
C.R.P. (NPD) (MD) .No.641 of 2017
17.03.2022

akv
MS/01.04.2022/3P.5C