



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26.09.2023**

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.165 of 2003

Arumugam

... Petitioner

Vs

1.Mariyae

2.Thangayee

3.Chinnaponnu

... Respondents

PRAYER:-Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to under Article 227 of the Constitution of India against fair and decreetal order dated 31.07.2002 passed in I.A.No.53 of 2002 in O.S..No.292 of 1999 by the learned District Munsif Cum Judicial Magistrate Court, Paramathy.

For Petitioner : Mr.J.Jayakumar

for Mr.N.Umapathi

For Respondents : Not ready in notice

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ORDER

O.S.No.292 of 1999 filed has been before the learned District Munsif Cum Judicial Magistrate Court, Paramati.

2. The entire bundles have been lost by the Registry and the papers were reconstructed. Arguments were heard on the basis of such reconstruction.

3. It is a suit for declaration of title and for recovery of possession. In the said suit, a written statement was called upon to be filed and it was not filed. Therefore, the defendant was called absent and set *ex-parte* and an *ex-parte* decree was passed on 14.02.2001. To set aside the *ex-parte* decree, an application was filed together with condonation of delay of 279 days. The reason given by the defendant is that on the date, when the matter was posted for recording of *ex-parte* evidence, he had suffered an accident and broken his leg.

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4. Mr.J.Jayakumar, for Mr.N.Umapathi, learned counsel appearing for the petitioner would submit that his client was taking native treatment and therefore, was not in a position to appear before the Court. He would further contend that the Court below ought to have considered the fracture that the petitioner had suffered and should have condoned the delay. He states that fracture of a limb is a sufficient cause for nonappearance in the the Court.

5. The respondents, though served with notice has not appeared before this Court.

6. The suit is for declaration and recovery of possession. The Court has granted time from 30.01.2000 to 14.02.2001. On the date, it was posted for filing of written statement, the petitioner has suffered an accident and broken his leg. He has specifically stated that he has been taking native treatment. A native Doctor would not give a certificate for the

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same. In fact, if a certificate has been produced from a native Doctor, it would be an artificial one. The delay is not enormous and the suit being for declaration and recovery of possession and as the petitioner has broken his leg, I find sufficient cause to condone the delay. Therefore the order passed in I.A.No.53 of 2002 in O.S.No.292 of 1999, dated 31.07.2002 is set aside. The delay is condoned with the following directions:-

(i) The learned District Munsif Cum Judicial Magistrate Court, Paramati is requested to take up the application under Order IX Rule 13 and allow the same.

(ii) Prior to such restoration, notice must be sent to the plaintiff.

(iii) The Court shall ensure that the plaintiff is put on notice before setting aside the *ex-parte* decree.

(iv) On being satisfied that the notice is being served on the plaintiff, the Court below is requested to receive a written statement from the defendants and to dispose of the suit within a period of nine months from



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the date of such service of notice on the plaintiff.

7. With the above directions, this Civil Revision Petition is allowed. No costs.

26.09.2023

gba

Index: Yes/ No

Speaking order: Yes/ No

Neutral Citations: Yes/ No

To

District Munsif Cum Judicial Magistrate Court,
Paramathy.

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V. LAKSHMINARAYANAN,J.

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