



C.R.P.No.1503 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 21.03.2023

Delivered On : 28.04.2023

CORAM :

**THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

C.R.P.No.1503 of 2021

Kandasamy : Petitioner/Petitioner/Plaintiff

-VS-

1.R.Ravi  
2.Karthik : Respondents/Respondents/Defendants

**PRAYER:** Civil Revision Petition had been filed under Section 115 of the Civil Procedure Code, praying to set aside the order passed by the learned II Additional District Munsif, Kallakurichi in I.A.No.85 of 2021 in O.S.No.229 of 2018, dated 08.03.2021.

For Petitioner : Mr.V.R.Appaswamee

For Respondents : Mr.P.Valliappan  
Senior Counsel  
for M/s.P.V.Associates



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## **ORDER**

**WEB COPY** This Civil Revision Petition had been filed seeking to set aside the order passed by the learned II Additional District Munsif, Kallakurichi in I.A.No.85 of 2021 in O.S.No.229 of 2018, dated 08.03.2021.

2.The learned Counsel appearing for the Revision Petitioner submitted that the Revision Petitioner is the Plaintiff in O.S.No.229 of 2018. He had filed the suit for permanent injunction against the Defendants. The Defendants entered appearance and filed written statement. Issues were framed and the suit was posted for trial. The suit was posted in the special list for trial on 11.12.2019. The Plaintiff was suffering from jaundice and also he is also a diabetic. Due to his health conditions, he was unable to attend the Court on the said date and the suit was dismissed for default. After recovering from the illness, when he approached his Counsel, he came to know that the suit was dismissed. Therefore, the time for restoration of the suit was also expired. Therefore, he had to file a petition under Section 5 of the Limitation Act to condone the delay in filing the petition to restore the suit under Order IX, Rule 9 C.P.C. The petition under Section 5 of the Limitation Act was filed as I.A.No.85 of 2021 to condone the delay of 361  
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days in filing the petition under Order IX, Rule 9 of C.P.C. to restore the suit.

3.The Defendants had filed counter disputing the contention of the Plaintiff as Petitioner. It is the contention of the Respondents in the counter that the Petitioner had not filed any documents in support of his contention that he was ill and that he could not appear before the Court on the date of dismissal of the suit, the date as to when he recovered from the illness and he had also not entered into the witness box to let in evidence regarding his illness.

4.After hearing the enquiry, the learned II Additional District Munsif, Kallakurichi, had dismissed the I.A.Nos.85 of 2021 and 86 of 2021 in O.S.No.229 of 2018 by order dated 08.03.2021.

5.It is the contention of the learned Counsel for the Revision Petitioner that by the time the Petition was filed, COVID-19 Lockdown restrictions were imposed. Therefore, as per the directions issued by the Hon'ble Supreme Court, the Limitation Act shall not be strictly enforced. The



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Petition filed by the litigants before the Court has to be considered leniently.

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6.The learned Counsel for the Respondents submitted that the Petition to condone the delay had not been properly explained. The reasons stated is that the Plaintiff suffered from jaundice and after his recovery, when he approached his Counsel, he came to know about the dismissal of the petition. Therefore, he is unable to file Petition to restore the suit within the specified time as per the Civil Procedure Code, therefore, he had filed Petition under Section 5 of the Limitation Act, cannot at all be accepted considering the delay caused and there is no documentary proof in support of his contention either medical certificate or any other proof. Also, he had not entered the witness box to prove his contention thereby subjecting himself to cross-examination by the Respondents regarding the contention of the Petitioner. Under those circumstances, the learned II Additional District Munsif, Kallakurichi, had passed a well reasoned order based on the reported ruling of the Hon'ble High Court of Madras in **1997 (1) CTC 651 [Gomathiammal -vs- Madhusoodanan Nair and another]**. Therefore, it does not warrant any interference by this Court under Section 115 of the



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Civil Procedure Code. This Civil Revision Petition lacks merit and it has to be dismissed.

7.Point for consideration:

***Whether the order passed by the learned II Additional District Munsif, Kallakurichi, in dismissing the I.A.Nos.85 and 86 of 2021 in O.S.No.229 of 2012 as per order dated 08.03.2021 is to be set aside?***

8.On consideration of the rival submissions and on perusal of the plaint averments, written statement, affidavit filed by the Petitioner, counter of the Respondents and the order passed by the learned II Additional District Munsif, Kallakurichi, the contention of the learned Counsel for the Revision Petitioner is found acceptable. Considering the valuable right of the Petitioner as Plaintiff, if the suit is not restored, it will cause injustice thereby preventing the Plaintiff from exercising his right and adjudicating the dispute. The learned Counsel appearing for the Revision Petitioner had also placed reliance on the reported ruling of the Hon'ble Supreme Court in ***LL 2021 SC 144 [In Re: Cognizance for Extension of Limitation]***. As per the said ruling, the period from 15.03.2020 till 14.03.2021 shall stand excluded.

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However, the learned II Additional District Munsif, Kallakurichi, had considered the said period from 15.03.2020 to 14.03.2021 as delay and had dismissed the Petition during that period. The affidavit of the Petitioner was filed on 25.12.2020. If the period from 15.03.2020 to 25.12.2020 is excluded, which comes to 285 days, the delay would be merely 76 days. In such a case, the delay is not inordinate. Therefore, the Petitioner ought to be given a chance to prosecute his suit for permanent injunction.

9.The insistence of the learned Counsel appearing for the Respondents that the Petitioner has to let in evidence to prove the contention regarding the health or illness and he has to subject himself to cross-examination regarding the same cannot be accepted strictly as the Petition was filed in the course of the Lockdown restrictions commencing from 15.03.2020 to 14.03.2021. Therefore, the arguments of the learned Counsel for the Respondents is rejected.

10.The trial Court had chosen to pass a common order in I.A.Nos.85 and 86 of 2021. Whereas I.A.No.85 of 2021 is under Section 5 of Limitation Act and I.A.No.86 of 2021 is for restoration of the suit. The



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petition for condonation of delay ought to be taken up first for adjudication and only after that, the restoration petition ought to be taken on file.

11. In the light of the above, the submission of the learned Counsel for the Respondents, who are the Defendants in the suit, is rejected. The submission of the learned Counsel for the Revision Petitioner is accepted. The point for consideration is answered in favour of the Petitioner and against the Respondents. The order passed by the learned II Additional District Munsif, Kallakurichi, dismissing the I.A.No.85 of 2021 and I.A.No.86 of 2021 in O.S.No.229 of 2012 as per order dated 08.03.2021 is liable to be set aside.

In the result, **this Civil Revision Petition is allowed.** The order passed by the learned II Additional District Munsif, Kallakurichi in I.A.No.85 of 2021 in O.S.No.229 of 2018, dated 08.03.2021 is set aside. The Petition to condone the delay is allowed without going into the hyper-technicalities of the Limitation Act. In continuation of the same, I.A.No.86 of 2021 in O.S.No.229 of 2018 filed for restoration of the suit is also allowed, since both the petitions were dismissed by common order dated



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08.03.2021. The learned II Additional District Munsif, Kallakurichi, is directed to restore the suit in O.S.No.229 of 2018 on file and proceed with the trial. The Petitioner is directed to co-operate with the Court and to help the Court for disposal of the case at the earliest. No costs.

**28.04.2023**

SRM

Index : Yes / No

Internet : Yes / No

Speaking Order / Non-Speaking Order



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To

- 1.The II Additional District Munsif,  
Kallakurichi.
- 2.The Section Officer,  
V.R. Section,  
High Court, Madras.



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**SATHI KUMAR SUKUMARA KURUP., J.**

**SRM**

**Order made in  
C.R.P.No.1503 of 2021**

**28.04.2023**