



C.R.P.No.3694 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3694 of 2023

and

C.M.P.No.15514 of 2023

Rajagopal

... Petitioner

-Vs-

1.Kannan

2.Raman

3.Mahalingam

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C.,
praying to set aside the fair and final order dated 29.11.2019 passed by the
learned Subordinate Judge, Sankari in I.A. No.1 of 2019 in I.A. No.41 of
2017 in un-numbered A.S. No....of 2016.

For Petitioner

:

Mr.L.Mouli

ORDER



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Challenging the impugned order passed in I.A.No.1 of 2019 in I.A.No. 41 of 2017 in unnumbered A.S.No..... of 2017 by the learned Subordinate Judge, Sankari, the Revision Petitioner/Appellant preferred this Civil Revision Petition.

2. Since the relief sought challenging the order of trial judge, notice to the respondents is dispensed with.

3. Before the trial court, the respondent/plaintiff filed a suit for declaration and injunction in O.S.No.224 of 2010 against this revision petitioner and other defendants. On hearing both sides, the suit was decreed in favour of plaintiff on merit. Against which, the 1st defendant preferred an appeal, but there is a delay of 35 days. To condone the delay, he filed an application in I.A.No.41 of 2017 and that application was allowed by the lower appellate judge by imposing cost of Rs.1000/-, but the said cost was not paid on or before 29.11.2019. Hence, the said application was dismissed due to non-payment of cost. Challenging the same, the present Civil Revision Petition has been filed.



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4. The learned counsel for Revision Petitioner would submit that the counsel, who appeared for him before the trial court was suffered with ailment and he is not able to give proper instructions to him to pay the cost, however, he is ready to pay the cost, but due to lack of communication, he was not able to pay the cost. Accordingly, he prayed to set aside the findings rendered by the trial judge.

5. On perusal of records, it reveals that the 1st defendant preferred an appeal within 35 days from the date of disposal of trial court order. So, he wanted to challenge the findings of trial judge. Furthermore, all the parties are brothers and close relative. If opportunity is not given to him, his valuable right to defend the case will be defeated. It is a settled proposition, due to negligence of advocate, litigant ought not to have put to suffering. Considering that, this court is inclined to set aside the findings rendered by the trial judge in I.A.No. 1 of 2019 in I.A.No.41 of 2017 in an unnumbered A.S. No.....of 2017. The Revision Petitioner is directed to pay a cost of Rs.3000/- to the 1st respondent/plaintiff within a period of two weeks from the date of receipt of copy of this order and on such payment, the trial judge is directed to proceed with the appeal as per manner known to law.



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Accordingly, this Civil Revision Petition is allowed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No

Speaking Order : Yes/No

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To

1. The Subordinate Judge, Sankari
2. The Section Officer, V.R.Section
High Court, Madras.



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T.V.THAMILSELVI, J.

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