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CRP No.1951 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

CRP No.1951 of 2019

Gopalakrishnan

... Petitioner

Vs

Murugesan

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair and decreetal order dated 14.03.2019 passed in I.A.No.505 of 2018 in O.S.No.41 of 2015 on the file of Sessions (Fast Track Mahila) Judge, Namakkal.

For Petitioner : Mr.K.M.Arun

For Respondent : Mr.S.Kalyanaraman

ORDER

This Civil Revision Petition arises against an order passed in I.A.No.505 of 2018 in O.S.No.41 of 2015.



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2. The application in I.A.No.505 of 2018 was filed to condone the delay of 143 days in re-presenting the restoration petition.

3. O.S.No.41 of 2015 is a suit on pronote. On the date when the matter was listed for trial, the petitioner's wife was sick and therefore, he could not be present before the Court. Subsequently, the suit was dismissed for default. An application was filed to restore the suit in time, but, the same was misplaced in the Office of the Advocate. Therefore, it could not be re-presented within the period granted for representation. Consequently, there arose a delay of 143 days in re-presentation of the restoration petition.

4. The learned trial Judge received the counter from the respondent and dismissed I.A.No.505 of 2018 on the ground that the petitioner has not explained every day's delay. Challenging the same, the present revision has been filed.



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5. Heard Mr.K.M.Arun, learned counsel for the petitioner and Mr.S.Kalyanaraman, learned counsel for the respondent and I have gone through the records.

6. The admitted case is that the plaintiff has filed a suit for recovery of money based on pronote. It does not help the plaintiff to delay the proceedings. He had engaged a lawyer. On the day that he was called to appear, his wife was sick and therefore, he took her to hospital. I find this sufficient cause to condone the delay.

7. Insofar as re-presentation is concerned, parties give the papers to lawyer and it is the lawyer who process the papers. If the lawyer had misplaced the papers, the parties must not be visited with harsh punishments. In any event, a petition to condone delay in representation is a matter between the Court and the parties. I take inspiration for the view from a decision of this Court in the case of *Y.Cusbar vs K.Subbarayan* 1993 TNLJ 375 (DB) and the view of this Court in *Bhuvaneswari vs R.Elumalai* 2002 3 CTC 22.



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V.LAKSHMINARAYANAN,J.,

sr

8. I am convinced with the reasons given in the affidavit and accordingly, the order passed in I.A.No.505 of 2018 in O.S.No.41 of 2015 is set aside and the delay of 143 days in representation is condoned.

9. In the result, the Civil Revision Petition is allowed. No costs.

26.07.2023

Index:Yes/No

Speaking order/Non-speaking order

sr

To

Sessions (Fast Track Mahila) Court, Namakkal.

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