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C.R.P.No.235 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V. LAKSHMINARAYANAN

Civil Revision Petition.No.235 of 2003

Boojan Bi

... Petitioner

Vs.

1. Kadhar Sabeel

2.Umarkanth

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 22.11.2002 made in I.A.No.399 of 2000 in O.S.No.643 of 1995 on the file of the Principal District Munsiff Court at Kallakurichi.

For Petitioner : Mr.N.Krishnakumar

For Respondents : Mr.D.Murugan

ORDER

The plaintiff is the revision petitioner. He filed a suit for declaration of title and for recovery of possession in O.S.No.643 of 1995 on the file of the Principal District Munsiff at Kallakurichi. The said suit was dismissed for default on 17.12.1998. In order to restore the said suit, an application ought



to have been filed within thirty days from the date of dismissal. The petitioner moved an application in I.A.No.399 of 2000 to condone the delay of 399 days in filing the application to restore the suit. The said application was dismissed by the learned District Munsiff, Kallakurichi, against which the present Civil Revision Petition was preferred.

2. On 31.10.2017, the Civil Revision Petition came to be allowed by the Hon'ble Mr.Justice.M.V.Muralitharan. He had directed that the application in I.A.No.399 of 2000, shall be condoned on the payment of Rs.10,000/- as costs. The learned counsel for the petitioner has filed a memo stating that on 27.11.2017, the said cost was paid by way of Demand Draft in the name of the respondents. Mr.Murugan, the learned counsel representing Mr.Arunkumar would state that the Demand Draft was received and also encashed in the year 2017 itself.

3. Unfortunately, the signed copy of the order was not made ready and therefore, the case was “de part heard” and posted for fresh hearing on 14.03.2019. Today, when the matter was taken up, the learned counsel for the petitioner as well as the learned counsel for the respondent would fairly submit that the Civil Revision Petition was allowed and they have also received the cost.



WEB COPY 4. I have independently gone through the order and I feel that the petitioner has made out sufficient cause for condonation of the delay. The learned District Munsiff felled in error in not condoning the delay. The Court below should have taken note of the fact that the matter relates to vital right to property and the Court need not adopt a straight jacket formula while dealing with such applications.

5. The plaintiff does not gain anything in delaying the matter, especially when she has been agitating the rights for more than 28 years. The Court ought to have adopted a lenient view and condoned the delay, but unfortunately it has not done so.

6. In the light of the order passed by this Court on 31.10.2017 and the same having been complied with by the parties, I am of the view that the delay can be condoned, recording the fact Rs.10,000/- has already been paid.

7. The learned District Munsiff, Kallakurichi, is directed to number the application to restore the suit, after giving notice to the learned counsel



C.R.P.No.235 of 2003

V. LAKSHMINARAYANAN

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for the defendants and allow that application also. Being the suit of the year 1995, the said suit shall be disposed of within a period of nine months from the date of receipt of copy of this order.

8. With the above directions, the Civil Revision Petition is allowed. The orders passed by the Court in I.A.No.399 of 2000 dated 22.11.2002 is set aside. The suit is restored on to the file of the learned Principal District Court, Kallakurichi who shall abide by the directions and ensure the suit is disposed of in a time bound manner. No costs.

06.07.2023

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

To

The learned Principal District Court, Kallakurichi

C.R.P.No.235 of 2003