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C.R.P. No.3014 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3014 of 2019

M.Kandasamy

.. Petitioner

vs.

1.T.Kumaravadivel

2.P.N.Padmanabhan

3.P.N.Kumaresan

.. Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the Fair and Final Order passed in I.A.No.256 of 2018 in O.S.No.4 of 2007 on the file of the IInd Additional District Court, Erode dated 23.07.2019 and allow the Civil Revision Petition.

For Petitioner : Mr.A.Sundara Vadhanan

For Respondent
(For R1) : M/s.S.Kaithamalai Kumaran

(For R2 & R3) : No appearance



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ORDER

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2. This was stiffly opposed by the respondents. The learned trial Judge dismissed the application in I.A.No.256 of 2018, which was to condone the delay in representation of the petition filed under Section 148 read with Section 151 of C.P.C. Consequently, the application filed under Order 9 Rule 9 of C.P.C stood rejected.



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3. Heard Mr.A.Sundara Vadhanan, learned counsel for the revision petitioner and Mr.S.Kaithamalai Kumaran, learned counsel for the 1st respondent.

4. Mr.A.Sundara Vadhanan, learned counsel for the revision petitioner would contend that the reason for the delay is beyond the petitioner's control, since he had become blind and there was no one to support him and he had also lost his wife and that is the reason why he could not be present at the time of trial, which resulted in dismissal of the suit. He says that vital rights of the parties are involved and he had always been ready and willing to co-operate towards completion of the trial.

5. The said contention was resisted by Mr.S.Kaithamalai Kumaran, learned counsel for the 1st respondent, by stating that the entire idea of the plaintiff is only to drag on the matter and keep the property under the cloud of litigation. He would say that he has an excellent case on merits. The plaintiff does not want to proceed with the case and he would justify the order passed by the learned II Additional District Judge, Erode.



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6. I have carefully considered the arguments on either side. Here is a petition to condone the delay in representation of 594 days. It is not in dispute that the petition to set aside has been filed in time. Unfortunately, due to reasons beyond the plaintiff/petitioner, the same could not be represented in time. The reason given by him is that his wife passed away and he does not have any one to support him and apart from that, he also lost his vision. In my view, these reasons constitute sufficient cause. It should have to be considered as such to condone the delay and to restore the suit.

7. However, considering the fact that Mr.S.Kaithamalai Kumaran, learned counsel for the 1st respondent says that his client has to be put on notice regarding restoration of the suit, I feel that the condonation and restoration could be done on terms.

8. Accordingly, the order passed in I.A.No.256 of 2018 in O.S.No.4 of 2007 on the file of the II Additional District Court, Erode is set aside on the condition that the plaintiff/petitioner pays a sum of Rs.5,000/- (Rupees Five Thousand only) to the learned counsel appearing



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for the 1st respondent. The said payment shall be made within a period of two weeks from the date of receipt of a copy of this order.

9. With the above directions, the Civil Revision Petition stands allowed.

03.08.2023

Index:Yes/No
Neutral Citation:Yes/No
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To

The II Additional District Court, Erode.



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V. LAKSHMINARAYANAN, J.

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