



C.R.P.No.750 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.04.2023
Delivered on	21.09.2023

CORAM

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

C.R.P.No.750 of 2023

in

C.M.P.No.6097 of 2017

A.K.Basha

... Petitioner/Defendant

v.

Vaniya Vysya Sangam
Rep. by its President & Secretary
Thiruppapuliyur,
Cuddalore 607 002.

... Respondent/Plaintiff

PRAYER: Civil Revision Petition under Section 115 of C.P.C., to allow this revision petition and set aside the fair and decreetal order dated 06.08.2022 passed by the learned 1st Additional Sub Judge, Cuddalore in I.A.No.1 of 2022 in A.S.No.50 of 2017 in O.S.No.217 of 2014 on the file of Principal Munsif Court, Cuddalore.

For Petitioner : Mr.R.Sampath Kumar

For Respondent : Mr.P.Dinesh Kumar



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ORDER

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This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure Code, seeking to set aside the fair and decreetal order dated 06.08.2022 passed by the learned 1st Additional Sub Judge, Cuddalore in I.A.No.1 of 2022 in A.S.No.50 of 2017 in O.S.No.217 of 2014 on the file of Principal Munsif Court, Cuddalore.

2. The facts which made the petitioner to file this application are as in brief:-

The respondent/plaintiff has filed O.S.No.217 of 2014 on the file of District Munsif, Cuddalore, seeking for recovery of possession of the suit property and to recover the rental arrears with interest from the date of filing of the suit till date of realization and for damages for use and occupation from the date of plaint and to pay the costs against the petitioner/defendant. After full-fledged trial, the said suit was decreed. Aggrieved by the same, the petitioner/defendant has preferred an appeal under Order 41 Rule 1 of C.P.C. in A.S.No.50 of 2017 on the file of the I Additional Sub Court, Cuddalore. Since the petitioner/defendant was bed ridden and affected by Covid-19 pandemic, he could not contact his



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counsel to instruct him in the appeal thereby, when the appeal was posted for argument, none represented the appellant. Hence the appeal was dismissed for default on 23.09.2019.

4. The petitioner/defendant filed I.A.No.1 of 2022 in A.S.No.50 of 2017 for condoning the delay of 684 days to restore the appeal and same was dismissed on 06.08.2022. Aggrieved over the same, the present revision is filed.

5. According to the petitioner/appellant, he was affected with Covid-19 pandemic, thereby he could not give instructions to his counsel to submit the argument in A.S.No.50 of 2017, thereby, appeal was dismissed for default.

6. Heard both sides and perused the record.

7. Section 5 of the Limitation Act, 1963, runs as under:-

“5. Extension of prescribed period in certain cases.—
Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the



prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

8. On going through the orders passed by learned trial Judge refusing to condone the delay, it is evident that the petitioner sought for condoning the delay on the ground that he was suffered from Covid-19 pandemic disease. According to the petitioner from September, 2019, he suffered pandemic disease. Though Covid-19 started in September, 2019, it has reached our Country, it was 2020. Apart from that, the petitioner has filed medical certificate before the trial Court to substantiate the contention that the petitioner was suffered from Covid-19. However, as observed by learned Judge in his order, the medical certificate discloses that the petitioner underwent treatment not for Covid-19 but for some other medical issues and that the petitioner was discharged from the hospital on 05.04.2022.

9. Therefore on considering the medical certificate, the submissions of the petitioner that he was suffered from Covid-19 is factually incorrect and the petitioner has filed a false medical certificate before the trial Court. Further, the petitioner has not explained the reasons for not filing



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the appeal on time even after discharging from the hospital on 05.04.2022. Except mentioning the reason on the ground of Covid-19, no other reasons are explained by the petitioner.

10. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.09.2023

PKN/mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

The Additional Sub Judge, Cuddalore.



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DR.D.NAGARJUN,J

PKN/mvs.

Pre-delivery order in
C.R.P.No.750 of 2023
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