



C.R.P.No.4612 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.4612 of 2017

E.Munaswamy Naidu

... Petitioner

Vs.

E.Narasimhalu

... Respondent

Prayer :- Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order dated 01.07.2017 made in I.A.No.139 of 2015 in unnumbered A.S., on the file of the Motor Accident Claims Tribunal (Subordinate Judge's Court, Tiruttani) by allowing the present Civil Revision Petition.

For Petitioner : Mr.K.V.Ananthakrushnan

For Respondent : Mr.P.Rathanavel

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 01.07.2017 passed by the learned Subordinate Judge (Motor Accident Claims Tribunal), Tiruttani, in I.A.No.139 of 2015



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in unnumbered A.S., thereby dismissing the petition to condone the delay in filing the appeal suit.

2. Originally, the petitioner filed suit in O.S.No.77 of 2007 as against the respondent for partition in respect of the suit schedule property. While pending the said suit, both parties entered into a compromise and on the compromise memo filed by them the suit was decreed on 15.02.2010. However the petitioner could not able to execute the decree, since one and another the respondent objected the same. Thereafter, the respondent filed an appeal suit as against the compromise decree in A.S.No.60 of 2013 on the file of the learned Subordinate Judge, Tiruttani.

3. While pending the appeal suit, the petitioner filed an application under Order 41 Rules 23 of C.P.C., and prayed to remand the case to the lower Court for fresh trial and decide the matter on merits, since the respondent also disputed the compromise decree and also objected the execution of the decree. Before numbering the said application, the respondent himself not pressed the appeal suit in A.S.No.60 of 2013 and



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withdrawn the same. Thereafter, the petitioner filed another suit challenging the compromise decree, since it was not executed and objected by the respondent herein. However, it was returned for the reason that if any one aggrieved by the compromise decree, the only remedy is to file an appeal suit. Therefore, the petitioner filed the appeal suit with the delay of 2117 days in filing the appeal suit. It was dismissed on the ground that as per the guidelines issued by the Hon'ble Supreme Court of India and by this Court, the delay was not explained properly. Hence, the petitioner filed this present Civil Revision Petition.

4. Heard Mr.K.V.AnanthaKrushnan, learned counsel appearing for the petitioner and Mr.P.Rathanavel, learned counsel appearing for the respondent.

5. On a perusal of records revealed that, there was sufficient reasons for delay of 2117 days in filing the appeal suit, since the respondent filed an appeal suit in A.S.No.60 of 2013 as against the compromise decree. However, subsequently, it was withdrawn and even then, the petitioner



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could not be able to execute the compromise decree, since it was objected by the respondent. Therefore, the petitioner properly explained the delay of 2117 days in filing the appeal suit. Hence, this Court finds infirmity in the order passed by the Court below and it is liable to be dismissed.

6. Accordingly, the order dated 01.07.2017 passed by the learned Subordinate Judge, Tiruttani, in I.A.No.139 of 2015 in unnumbered A.S., is hereby set aside. The trial Court is directed to number the appeal and dispose the same on merits and in accordance with law.

7. With the above directions, the Civil Revision Petition stands allowed. There shall be no order as to costs.

09.01.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts



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WEB COPY To

1. The Subordinate Judge,
Tiruttani.



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G.K.ILANTHIRAIYAN, J.

rts

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