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C.R.P(PD)No.4093 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition (NPD) No.4093 of 2019
and C.M.P.No.26786 of 2019

J.N.Nanjappan

... Petitioner

Vs.

1.N.Aruna

2.Buvana

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 22.08.2019 made in I.A.No.187 of 2018 in O.S.No.01 of 2016 on the file of Principal District Judge, Dharmapuri and allow the above Civil Revision Petition.

For Petitioner : M/s.S.Menaka
for V.R.Annagandhi

For Respondent 1 : No Appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 22.08.2019 made in I.A.No.187 of 2018 in O.S.No.01



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of 2016 on the file of Principal District Judge, Dharmapuri and allow the above Civil Revision Petition.

2. The petitioner is the first defendant in the suit and first respondent in the application. The suit in O.S.No.1 of 2016 has been originally filed by one N.Aruna, who is the first respondent in this petition against the revision petitioner and the second respondent herein for partition and separate possession and permanent injunction of the suit schedule property. Thereafter, the said suit was dismissed for default on 05.01.2018.

2.2. In order to restore the aforesaid suit, the first respondent has filed a restoration petition in I.A.No.29 of 2018 and the same was allowed with a condition to payment of cost of Rs.500/- to the petitioner and the second respondent on or before 26.06.2018, however, at that time, the first respondent was affected by Chicken Kuniya and failed to comply the order passed by the Lower Court. Hence, the aforesaid I.A.No.29 of 2018 was also dismissed on 28.06.2018.

2.3. In view of the above, the first respondent has filed another



application in I.A.No.187 of 2018 for extending the time to pay the cost of Rs.500/- to the petitioner and the second respondent for restoring the suit in O.S.No.1 of 2016 and the same was allowed on 22.08.2019. Challenging the said order dated 22.08.2019, the petitioner has come forward with the present Civil Revision Petition.

3. The main contention of the learned counsel for the petitioner is that the petition for extension of time in I.A.No.187 of 2018 was filed on 25.07.2018 which is after a delay of four days, since the time for paying the cost of Rs.500/- has been expired on 26.06.2018. She has further submitted that no medical records were filed in support of the averments made in the affidavit that the petitioner was suffered from Chikungunya and no medical prescription were produced to substantiate the same before the Trial Court.

4. Heard the learned counsel for the petitioner and **no representation for the learned counsel appearing for the first respondent for the last two occasions i.e., on 29.11.2023 and 06.12.2023.**



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5. In the case on hand, the suit in O.S.No.01 of 2016 was dismissed for default on 05.01.2018 and for restoring the same, restoration petition in I.A.No.29 of 2018 was filed, which was allowed with a condition to the first respondent to pay a cost of Rs.500/- on or before 26.06.2018. Since, the first respondent was suffering from Chikungunya, she has failed to comply the aforesaid order and the said I.A.No.29 of 2018 was dismissed on 28.06.2018. After that, the first respondent has filed another petition in I.A.No.187 of 2018 for extending the time limit to pay the cost of Rs.500/-, after a delay of four days, since the payment of cost to the petitioner and the second respondent has expired on 28.06.2018, which was also allowed on 22.08.2019.

6. Though the first respondent has not paid the cost on time, the **delay is only for four days in filing the application for extension of time, since the suit is only for declaration and permanent injunction. Hence, this Court is not inclined to set aside the order dated 22.08.2019 passed by the Principal District Judge, Dharmapuri and the same is hereby confirmed.**



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7. In the result, this Civil Revision Petition stands dismissed. No costs.

Consequently, connected miscellaneous petition is also closed.

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

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