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C.R.P(MD)No.366 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.366 of 2022

Ramachandran

... Petitioner/Petitioner
Appellant

Vs.

Ashan Mohammed Ravuthar

... Respondent/Respondent/
Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records of the learned Additional Subordinate Judge, Pudukottai made in I.A.No.20 of 2021 in A.S.No.28 of 2016 and to set aside the fair and decreetal order dated 15.11.2021.

For Petitioner
For Respondent

:Mr.D.Rameshkumar
:Mr.P.Ganapathi Subramanian

ORDER

This civil revision petition is filed against the fair and decreetal order, dated 15.11.2021 passed in in I.A.No.20 of 2021 in A.S.No.28 of 2016 by learned Additional Subordinate Judge, Pudukottai.



2. According to the petitioner/defendant, the respondent/plaintiff filed a suit in O.S.No.49 of 2011 before the District Munsif Court, Pudukkottai, for evicting the petitioner/defendant from the suit property and for paying a sum of Rs.43,500/- as rental arrears for 29 months and also for future rent. The above suit was decreed in favour of the respondent/plaintiff. Against which, appeal was preferred in A.S.No.28 of 2016 before the Additional Sub-Court, Pudukkottai by the petitioner/defendant. Thereafter, the said appeal was dismissed for default. Therefore, the petitioner/defendant filed I.A.No.20 of 2021 to condone the delay of 466 days for restoring the appeal which was dismissed for default on 13.08.2019.

3. The said petition was resisted on the side of the respondent/plaintiff stating that execution petition have been filed and this application was filed with an intention to delay the execution process. The first appellate Court, considering the averments made in the petition and in the counter affidavit and the arguments advanced by the respective counsel, dismissed the application stating that no reasonable and satisfactory explanation is given by the petitioner for the inordinate delay of 466 days. Aggrieved by the same, the present Civil Revision Petition is filed.



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4.The learned counsel appearing for the revision petitioner would submit that the petitioner is aged about 72 years and suffering from old age ailments and was unable to meet his counsel to get instructions for filing the appeal in time. Hence, the delay was occurred. However, the learned Additional Sub Judge, Pudukkottai, without considering the above facts, erroneously dismissed the application filed by the petitioner.

5.On the other hand, the learned counsel appearing for the respondent would submit that the respondent/plaintiff has filed an execution petition, at that stage, the petitioner/defendant has filed the above petition is only to drag on the proceedings.

6.Considering the facts and circumstances of the case and in the interest of justice, the order dated 15.11.2021 passed in I.A.No.20 of 2021 in A.S.NO.28 of 2016 by the Additional Sub Judge, Pudukkottai, is hereby set aside and the Civil Revision Petition is allowed. To compensate the other side, the petitioner is directed to pay a sum of Rs.5,000/- as cost directly to the learned counsel appearing for the respondent on or before 28.08.2023 and in addition, the petitioner is also directed to deposit the mesne profit to the credit of A.S.No.28 of 2016 on the file of the Additional Subordinate Court, Pudukkottai.



7.Since the appeal is of the year 2016, the learned Additional Subordinate Judge, Pudukkottai, is directed to dispose the appeal within a period of two months from the date of receipt of a copy of this order. No costs.

09.08.2023

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

To

1.The Additional Subordinate Judge,
Pudukottai.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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K.GOVINDARAJAN THILAKAVADI, J.

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