



WEB COPY



C.M.P.(MD)No.2394 of 2023
and
C.R.P.(MD)SR.No.9454 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.P.(MD)No.2394 of 2023
and
C.R.P.(MD)SR.No.9454 of 2023

Ramamoorthy, S/o.Munusamy

.. Petitioner/Petitioner

Versus

Kanagaraj, S/o.Munusamy

.. Respondent/Respondent

PRAYER IN C.M.P.(MD)No.2394 of 2023: Petition filed under Section 5 of Limitation Act, seeking to condone the delay of 469 days in filing C.R.P. (MD)SR.No.9454 of 2023.

PRAYER IN C.R.P.(MD)SR.No.9454 of 2023: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the fair and executable order dated 16.08.2019, made in I.A.No.845 of 2014 in O.S.No.2030 of 1991, on the file of the I Additional District Munsif Court, Tiruchirappalli.

For Petitioner : Ms.S.Vedavalli

For Respondent : Mr.P.Saravanakumar

ORDER

This petition has been filed by the petitioner seeking to condone the delay of 469 days in filing C.R.P.(MD)SR.No.9454 of 2023, against the fair and executable



C.M.P.(MD)No.2394 of 2023
and
C.R.P.(MD)SR.No.9454 of 2023

WEB COPY

order dated 16.08.2019, in I.A.No.845 of 2014 in O.S.No.2030 of 1991, on the file of the I Additional District Munsif Court, Tiruchirappalli.

2. The petitioner is the defendant in O.S.No.2030 of 1991, on the file of the I Additional District Munsif Court, Tiruchirappalli. The respondent had filed the said suit, seeking a direction to the petitioner to deliver vacant possession of "B" schedule suit property; for permanent injunction to restrain the petitioner, his men, agents, servants, relations and contractors from in any manner removing or interfering with the existing structure of "B" schedule suit property, described as "EFGHE" in the Plaint Plan or making any structural alterations inclusive of the roof or otherwise; and a direction to the petitioner to pay a sum of Rs.100/- p.m. towards mesne profits and also to appoint a Commissioner to ascertain mesne profits under Order XX Rule 12 of C.P.C.

3. The petitioner remained absent and therefore, he was set *ex parte* on 31.01.1992. Thereafter, he filed I.A.No.845 of 2014 on 28.08.2014, *i.e.*, after a period of 22 years, seeking to condone the delay of 8214 days in filing the application to set aside the *ex parte* decree, dated 31.01.1992. The said application was dismissed by the learned I Additional District Munsif, Tiruchirappalli, vide order dated 16.08.2019. Challenging the same, the petitioner has filed C.R.P.(MD)SR.No.



C.M.P.(MD)No.2394 of 2023
and
C.R.P.(MD)SR.No.9454 of 2023

9454 of 2023 along with the present petition to condone the delay of 469 days in filing the said Civil Revision Petition.

4. It is the specific case of the petitioner that due to confusion arising out of Covid lock down, dismissal of I.A.No.845 of 2014 on 16.08.2019, was not communicated to him immediately and thereafter, he has approached his counsel during October, 2021 and after tracing the records, the present Civil Revision Petition has been filed on 08.02.2023. Hence, there was a delay of 496 days in filing the Civil Revision Petition.

5. In my view, the reasons given in the affidavit for condoning the delay are not sufficient, as it was the petitioner allowed the suit to be decreed *ex parte* on 31.01.1992 and thereafter, took about 22 years to take steps to set aside the *ex parte* decree, by filing application in I.A.No.845 of 2014, to condone the delay of 8214 days in filing the application to set aside the *ex parte* decree.

6. The Covid lock down, which is given as a reason for the delay, cannot be countenanced as the whole of the year 2022 was by and large free from any Covid lock down restrictions. The Civil Revision Petition has been filed only on 08.02.2023 and therefore, the delay of 469 days in filing the present Civil Revision Petition cannot be condoned.



C.M.P.(MD)No.2394 of 2023
and
C.R.P.(MD)SR.No.9454 of 2023

7. In such a view the matter, this petition is dismissed. Consequently, the Civil
Revision Petition, which is in SR stage, is rejected. No costs.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
smn2

27.03.2023

To

The I Additional District Munsif,
Tiruchirappalli.



WEB COPY



C.M.P.(MD)No.2394 of 2023
and
C.R.P.(MD)SR.No.9454 of 2023

C.SARAVANAN, J.

smn2

Order made in
C.M.P.(MD)No.2394 of 2023
and
C.R.P.(MD)SR.No.9454 of 2023

27.03.2023