



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 14.02.2023

DELIVERED ON: 16.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

CMP(MD).No.3968 of 2020

in

CRP(MD).SR.No.27560 of 2020

Thalaimalai Venkatesan

Represented by his Power Agent/Wife

Kalaiselvi

: Petitioner/Petitioner

Vs.

V.Sesuraj

:Respondent/Respondent

PRAYER in C.M.P(MD).No.3968 of 2020: The Civil Miscellaneous Petition has been filed under Section 5 of Limitation Act, to condone the delay of 554 days in filing the above Civil Revision Petition.

PRAYER in C.R.P.(MD).SR.No.27560 of 2020: The Civil Revision Petition has been filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order dated 26.10.2018 passed in I.A.No. 443 of 2017 in O.S.No.292 of 2010 on the file of the Additional District Munsif Court, Dindigul and allow the Civil Revision Petition.



For Petitioner : Mr.M.Saravanan

For Respondent : Mr.J.Lawrance

ORDER

The present application has been filed to condone the delay of 554 days in filing the present revision petition.

2.The petitioner as plaintiff had filed O.S.No.292 of 2010 on the file of the Additional District Munsif Court, Dindigul for the relief of permanent injunction. The said suit was dismissed for default on 14.06.2016. The petitioner had filed I.A.No.443 of 2017 to condone the delay of 70 days in filing an application to restore the said suit on the ground that he was abroad during the relevant period and hence, he could not file an application in time. The trial Judge dismissed the said application on the ground that no documents have been produced by the power agent to establish his ill-health. The said order is challenged by filing the present civil revision petition.



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3. There is a delay of 554 days in filing the above revision petition.

In the affidavit, the petitioner had contended that he is working abroad and taking advantage of the said fact, the respondent is attempting to usurp the property. He had further contended that he has not received any information from his counsel till July 2020. Only when he had contacted his counsel over phone, he came to know about dismissal of the restoration application. Though his Advocate had informed that he has addressed a letter, he has not received any such letter. Only because of the communication gap, there is a delay of 554 days in filing the civil revision petition.

4. The respondent had filed a detailed counter contending that the reason assigned by the petitioner is not legally acceptable. That apart, the petitioner had filed I.A.No.444 of 2017 to restore the suit. The said application was dismissed. Challenging the same, the petitioner had filed CMA.No.9 of 2019 before the Principal Subordinate Court, Dindigul and he is prosecuting the same. Hence, the contention of the petitioner that his Counsel has not properly intimated about the dismissal of the restoration application till July 2020 is not factually correct. Hence, he prayed for dismissal of the condone delay petition.



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5.I have considered the submissions made on either side and perused the materials available on record.

6.The petitioner had averred the following two reasons in his condone delay affidavit .

(a).The petitioner is residing abroad and hence, he could not contact his counsel.

(b).Only in July 2020, he had received information about dismissal of the restoration petition.

7.A perusal of the restoration application in I.A.No.443 of 2017 clearly indicates that the petitioner is represented by his power agent who is none other than his wife. Therefore, the petitioner cannot plead about the communication gap between himself and his Advocate.

8.The petitioner had filed I.A.No.443 of 2017 to condone the delay of 70 days in restoring the suit. The petitioner had also filed I.A.No.444 of 2017 to restore the suit. Both these applications have been dismissed on 26.10.2018. As against the order made in I.A.No.444 of 2017, the petitioner has promptly filed C.M.A.No.9 of 2019 before the Principal Subordinate Judge, Dindigul which is pending as on today. However only for filing a revision as against the order in I.A.No.443 of



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2017, the petitioner has contended that he was not aware of the order till July 2020. Therefore, it is clear that the petitioner has not come to the Court with clean hands. In fact, the petitioner has suppressed about the pendency of C.M.A.No.9 of 2019 before the Subordinate Court, Dindigul in the present condone delay application.

9.In view of the above said facts, I do not find any merit or any reasonable cause to condone the delay of 554 days in filing the above civil revision petition.

10.Accordingly, this Civil Miscellaneous Petition is dismissed. In view of the order passed in CMP(MD)No.3968 of 2020, the connected C.R.P.(MD)SR.No.27560 of 2020 is rejected at the SR stage itself. No costs.

16 .02.2023

Internet : Yes / No
Index : Yes / No
NCC : Yes/No
msa

To

The Additional District Munsif,
Dindigul



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6

R.VIJAYAKUMAR, J.

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in
CRP(MD).SR.No.27560 of 2020

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