



CRP (MD) No.2228 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	23.08.2023
Pronounced on	15.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.2228 of 2022
and
CMP(MD)No.10442 of 2022

K.Saroja

... Petitioner

Vs.

Sathaiah

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decretal order dated 03.08.2022 made in I.A.No.222 of 2022 in O.S.No.29 of 2018 on the file of Sub Court, Aranthangi.

For Petitioner : Mr.J.Prabhu

For Respondent : Mr.R.Balakrishnan



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ORDER

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2. According to the petitioner, the above suit in O.S.No.29 of 2018 is filed by the respondent/plaintiff for the relief of specific performance. In the above suit, an ex parte decree was passed on 29.08.2019. The petitioner/defendant thereafter filed an application under Section 5 of the Limitation Act to condone the delay of 911 days in filing the petition to set aside the ex parte decree. In the said petition, the petitioner/defendant has stated that since he was suffering from jaundice and due to the pandemic situation, he was unable to attend the Court and therefore, he was set ex parte. His absence is either wilful nor wanton and therefore, the above delay may be condoned. The said petition was resisted on the side of the respondent/plaintiff and in the counter affidavit, the respondent/plaintiff stated that the explanation given by the petitioner/defendant that he was suffering from jaundice is utter false. The petitioner failed to explain each



and every day delay as contemplated under Section 9 of the Limitation Act and therefore, the petition is liable to be dismissed. The trial Court after considering the averments made in the petition and the arguments advanced by the respective counsel, dismissed the above petition by stating that the explanation given by the petitioner/defendant for the delay is unsustainable. Aggrieved by this, the petitioner/defendant filed the above revision.

3. The learned counsel appearing for the revision petitioner would submit that deducting the corona pandemic period, the actual delay is only 136 days and inspite of showing sufficient cause, the trial Court dismissed the application without applying the principles of liberal approach. He would further contend that the petitioner is the owner of the property and being a senior citizen and lost her husband, she was not in a position to pursue the case as a single lady. Therefore, the trial Court without considering the above facts, dismissed her application. The learned counsel would further submit that the power exercised under Section 5 of the Limitation Act, is a discretionary exercise and if the Court is satisfied that there is a sufficient cause to condone the delay, the same can be condoned. He would further



submit that the Court would always be in favour of substantial justice rather than technicalities, when they are pitted against each other. The petitioner should be given opportunity to meet the case on merits. He would further submit that the trial Court is erred in dismissing the application on hyper-technical ground and therefore, the same is liable to be dismissed. To support his contention, he has relied upon the decision cases reported in ***(1987) 2 SCC 107 and 2005 (3) CTC 638.***

4. On the other hand, the learned counsel appearing for the respondent strenuously contended that the affidavit filed in support of the application to condone the delay, is devoid of any merit as it does not contain any reason to condone the delay. Hence, the trial Court has rightly dismissed the petition, which calls for no interference.

5. Heard on both sides and records perused.

6. The power to be exercised under Section 5 of the limitation act is a discretionary exercise, that is if the trial Court is satisfied that there is



sufficient cause, which is enough to condone the delay. As rightly pointed out by the learned counsel appearing for the petitioner, it is very well settled that when the technicalities and substantial justice are pitted against each other, law and Courts would always be in favour of the substantial justice rather than technicalities. No doubt, the petitioner has not explained the reasons for the delay in his application. But, the Court should have considered the same by imposing some costs.

7. Ordinarily, the litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible adjudication is done on merits. If the said application is not considered, the rights of the petitioner will be affected. Keeping in view of the same, this Court is inclined to consider the revision by passing following order.

8. This Civil Revision Petition is allowed setting aside the order passed in I.A.No.222 of 2022 in O.S.No.29 of 2018, dated 03.08.2022, on the file of the Sub Court, Aranthangi, on a condition of payment of costs of Rs.3,000/-



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to the respondent within a period of two weeks from the date of receipt of a copy of this order. If the costs are not paid as directed by this Court, the order passed in I.A.No.222 of 2022 holds good. No costs. Consequently, connected miscellaneous petition is closed.

15.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

The Subordinate Judge,
Aranthangi.



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