



C.R.P.(MD) Nos.415 & 523 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2023

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THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) Nos.415 & 523 of 2023

Muthurakku

... Petitioner in
both C.R.Ps.

Vs.

1.Manimekalai

2.S.Palaniappan

... Respondents in
both C.R.Ps.

Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure, 1908, to set aside the fair and decreetal orders both dated 14.06.2022 in I.A.Nos.1 & 2 of 2021 in A.S.No.25 of 2017 respectively on the file of the Principal District Court, Sivagangai.

For Petitioner
in both C.R.Ps. : Mr.Ponsenthilkumaran

For Respondents
in both C.R.Ps. : Mr.Adithya Vijayalayan

COMMON ORDER

By this common order, both these Civil Revision Petitions are being disposed of.



C.R.P.(MD) Nos.415 & 523 of 2023

2. These Civil Revision Petitions have been filed to set aside the fair and decretal orders both dated 14.06.2022 in I.A.Nos.1 & 2 of 2021 in A.S.No.25 of 2017 respectively on the file of the Principal District Court, Sivagangai.

3. The petitioner is the unsuccessful plaintiff in O.S.No.74 of 2007. The said suit was filed for recovery of damages cost of Rs.1,40,100/- and for mandatory injunction. After the trial was completed, the said suit was dismissed on 06.01.2017. It appears that the petitioner failed to address the arguments after the trial was completed in the above suit.

4. Aggrieved by the same, the petitioner filed an appeal in A.S.No. 25 of 2017 before the Principal District Court, Sivagangai, against the Judgment and Decree dated 06.01.2017 passed in O.S.No.74 of 2007. The said appeal was dismissed for default on 11.09.2020.

5. Under these circumstances, the petitioner filed I.A.No.1 of 2021 in A.S.No.25 of 2017 for condonation of delay of 121 days in filing the application for restoration of appeal. The said I.A. was allowed on 18.11.2021 with direction to the petitioner to pay a sum of Rs.2,000/- on



C.R.P.(MD) Nos.415 & 523 of 2023

or before 25.11.2021. However, the petitioner failed to remit the amount in time.

6. Therefore, the petitioner filed I.A.No.2 of 2022 for extension of time for remitting the aforesaid amount of Rs.2,000/-. The said I.A.No.2 of 2022 was dismissed *vide* order dated 14.06.2022 which is impugned in C.R.P.(MD) No.415 of 2023. Consequently, I.A.No.1 of 2022 was also dismissed on the very same day *vide* order dated 14.06.2022 which is impugned in C.R.P.(MD) No.523 of 2023.

7. The learned counsel for the petitioner submits that the petitioner has a fair case on merits, and therefore, the present Civil Revision Petitions are liable to be allowed by fixing the time for disposal of the appeal.

8. Per contra, the learned counsel for the respondents submits that the petitioner has allowed the appeal to be dismissed for default on 11.09.2020. There is negligence on the part of the petitioner for not prosecuting the appeal. It is submitted that despite opportunities being granted to the petitioner, the petitioner failed to appear before the



C.R.P.(MD) Nos.415 & 523 of 2023

Principal District Court, Sivagangai and the appeal was dismissed. It is further submitted that despite the being condoned by the Court in I.A.No. 1 of 2022 on 18.11.2021 with direction to remit a sum of Rs.2,000/- on or before 25.11.2021, the petitioner has filed to remit the amount within the time period and therefore, no further indulgence is required and therefore, the order passed in I.A.No.1 of 2022 be upheld.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

10. It is clear that the petitioner was negligent both in not participating the proceedings in appeal filed by him against the Judgment and Decree dated 06.01.2017 passed in O.S.No.74 of 2007 which was therefore dismissed for default on 06.01.2017 and in not remitting the amount of Rs.2,000/- that was ordered to be paid while allowing the I.A.No.1 of 2022 filed by the petitioner for condoning the delay of 121 days in filing the application for restoration of appeal, on 18.11.2021.

11. However, in my view, the petitioner deserves to a fair chance to make out the case before the Principal District Court, Sivagangai as the



C.R.P.(MD) Nos.415 & 523 of 2023

petitioner was negligent in not participating the proceedings in appeal and in not remitting the amount. Since the petitioner is entitled to redress his grievances in the appeal filed by him, I am inclined to interfere with the impugned orders.

12. Therefore, the impugned orders are set aside and the case is remitted back to the Principal District Court, Sivagangai, to dispose of the appeal on merits providing the petitioner to pay the cost of Rs.2,000/- already awarded by the Court below and a further sum of Rs.3,000/-, in all, a sum of Rs.5,000/- to the respondents, within a period of 30 days from the date of receipt of a copy of this order.

13. The petitioner shall file a memo of compliance before the Principal District Court, Sivagangai including the proof of payment. On such compliance, the Principal District Court, Sivagangai shall restore the appeal to its file and dispose the same on merits and in accordance with law, within a period of 6 months thereafter.

14. The petitioner is directed to co-operate with the court proceedings.



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C.R.P.(MD) Nos.415 & 523 of 2023

C.SARAVANAN, J.

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15. Accordingly, these Civil Revision Petitions are allowed. No cost.

09.06.2023

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

The Principal District Court, Sivagangai.

C.R.P.(MD) Nos.415 & 523 of 2023