



C.R.P(MD)No.2136 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P(MD) No.2136 of 2017

R.Thirunavukkarasu

...Petitioner

Vs.

R.N.Ramamani

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the against the fair and decreetal order dated 19.07.2017 passed in I.A.No.339 of 2015 in O.S.No.1157 of 2012 on the file of the Principal District Munsif Court, Madurai Town, Madurai District and allow this Civil Revision Petition.



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For Petitioner : Mr. S.Sakthi Siddarth
for Mr.R.Suriya Narayanan
For Respondent : No Appearance

ORDER

This Civil Revision Petition is filed against the order dated 19.07.2017 passed in I.A.No.399 of 2015 in O.S.No.1157 of 2012 on the file of the Principal District Munsif Court, Madurai Town.

2. The Revision Petitioner is the plaintiff and the respondent is the defendant in the suit in O.S.No.1157 of 2012 on the file of the Principal District Munsif Court, Madurai Town, filed for permanent injunction.

3. Heard Mr.Sakthi Siddarth, learned counsel representing Mr.R.Suriya Narayanan, learned counsel appearing for the petitioner on record and perused the material available on record. There is no representation on behalf of the respondent.



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4. The facts of the case are that the suit filed by the petitioner was dismissed for default by judgment and decree, dated 10.04.2014. On 02.03.2015, the petitioner filed an application under Section 5 of the Limitation Act seeking to condone the delay of 326 days in filing the restoration application in the suit. After hearing, the Court below dismissed the said application by order, dated 19.07.2017. Aggrieved by the same, the present Civil Revision Petition is filed.

5. In spite of service of notice and after entering appearance on behalf of the respondent by one counsel, there is no appearance on behalf of the respondent. In fact the respondent appeared in the main suit and also filed his written statement.

6. The suit was posted for trial on 05.03.2014 and posted on list on 03.04.2017 and 10.04.2017. On 10.04.2017 as the plaintiff is absent, the suit was dismissed for default. Thereafter, the petitioner filed an application to restore the main suit with a petition



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to condone the delay of 326 days. The Court below considering the reason stated by the petitioner that the delay occurred due to the reason that their previous counsel did not inform the stage of the case, the Court below came to an opinion that the reasons stated by the petitioner is not satisfactory and dismissed the delay condonation application. But it is to be noted that while dismissing the delay petition, the Court below also entered into the merits of the case and observed that the relief in the suit cannot be sought for against the true owner by a mere occupier of the suit property and considering the nature of the relief also the petitioner need not be given an opportunity to contest the case.

7. In the considered opinion of this Court, the Court below committed an error while recording its findings on merits of the suit without contest. The Court below ought to have confined to consider the application filed for condonation of delay of 326 days, if the reasons stated by the petitioner are not sufficient to condone the delay, it is always open to the Court to dismiss the same.



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8. On careful perusal of the order under challenge in this Civil Revision Petition, it appears that the court below with predetermined mind has dismissed the application filed in I.A.No.339 of 2015 which is not permissible under law.

9. For the aforesaid reasons, in the considered opinion of this Court, the order, dated 19.07.2017 passed in I.A.No.339 of 2015 in O.S.No.1152 of 2012 on the filed of the Principal District Munsif Court, Madurai Town, is not sustainable under law.

10. However, considering these facts and circumstances of the case, this Court is of the considered opinion that the delay of 326 days in filing the restoration application to be condoned considering the fact that the delay occurred due to no fault of the petitioner, on certain conditions. This Court is of the opinion that by allowing the delay condonation petition no prejudice will be caused



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to the respondent and both parties would get an opportunity for fair trial in the suit proceedings.

11. For the reasons stated above, the order dated 19.07.2017 passed in I.A.No.339 of 2015 in O.S.No.1157 of 2012 on the file of the Principal District Munsif Court, Madurai Town, is hereby set aside, subject to certain conditions.

12. Accordingly, this Civil Revision Petition is allowed with the following directions :

1) the order dated 19.07.2017 passed in I.A.No.339 of 2015 in O.S.No.1157 of 2012 on the file of the Principal District Munsif Court, Madurai Town, is hereby set aside;

2) The delay of 326 days in filing the restoration application is condoned on condition of payment of cost of Rs.5,000/- (Rupees Five Thousand only) payable by the petitioner/plaintiff



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to the respondent/defendant within a period of two weeks from the date of receipt of a copy of this order and file a memo of payment of cost in the Court below within one week thereafter.

3) No costs.

16.11.2023

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

RM

To

The Principal District Munsif
Principal District Munsif Court,
Madurai Town,
Madurai District.



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BATTU DEVANAND, J.

RM

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