



C.R.P(PD)(MD)No.2805 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2805 of 2023

and

C.M.P.(MD)No.14616 of 2023

Rajesh Kumar

: Petitioner/Petitioner
2nd Defendant

Vs.

Maya

: Respondent/Respondent
Plaintiff

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the docket order, dated 29.08.2023 passed by the District Munsif Court, Kovilpatti in I.A.No.440 of 2023 in O.S.No.7 of 2022 in so far as the conditional clause.

For Petitioners

: Mr.K.Muthurakkan



C.R.P(PD)(MD)No.2805 of 2023

WEB COPY

ORDER

The Civil Revision Petition is directed against the docket order, dated 29.08.2023 passed by the District Munsif Court, Kovilpatti in I.A.No.440 of 2023 in O.S.No.7 of 2022, dismissing the petition filed under Section 5 of Limitation Act to condone the delay of 18 days in filing the application for setting aside the ex-parte order filed under Order IX Rule 7 C.P.C.

2. Considering the nature of the relief claimed, the issuance of notice to the respondent is not necessary.

3. It is evident from the records that the petition filed under Section 5 of Limitation Act, was taken on file on 03.08.2023 and posted to 29.08.2023 for notice of hearing and counter and that on the very first hearing date of 29.08.2023, the learned District Munsif, without ascertaining, whether notice of hearing was given or not and without giving any opportunity, by observing that notice of hearing was not filed and the petitioner was called absent, dismissed the petition.



C.R.P(PD)(MD)No.2805 of 2023

WEB COPY

4. As rightly contended by the learned counsel for the petitioner, the trial Court has hurriedly dismissed the petition. More importantly, as already pointed out, the above application under Section 5 of Limitation Act came to be filed to condone the delay in filing the petition for setting aside the ex-parte order under Order IX Rule 7 C.P.C.

5. It is pertinent to note that there is no period of limitation for filing an application under Order IX Rule 7 C.P.C. A learned Judge of this Court in ***Pilla Reddy And Others. vs Thimmaraya Reddy And Others*** reported in 1997 1 MLJ 37, after taking note of several decisions on the point, has specifically held that there is no limitation for filing an application under Order IX Rule 7 of the Code of Civil Procedure.

6. Considering the above, the learned District Munsif ought not to have entertained the petition filed under Section 5 of Limitation Act and as such, the very numbering of the said petition and the subsequent dismissal of the same are not only improper, but not in accordance with law. Hence, the learned District Munsif is hereby directed to take the petition under



C.R.P(PD)(MD)No.2805 of 2023

WEB COPY

Order IX Rule 7 C.P.C, on file, if it is otherwise in order and proceed in accordance with law.

7. With the above observation and direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

07.11.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
das

To

- 1.The District Munsif Court, Kovilpatti.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.R.P(PD)(MD)No.2805 of 2023

K.MURALI SHANKAR,J.

das

Order made in
C.R.P.(MD)No.2805 of 2023
and
C.M.P.(MD)No.14616 of 2023

Dated : 07.11.2023