



C.R.P(MD)No.2343 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P(MD)No.2343 of 2019
and
C.M.P(MD)No.12354 of 2019

R.Pandiyammal ... Petitioner / Appellant / Defendant

.Vs.

Arjunan ... Respondent / Respondent/ Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 19.08.2019 passed in C.M.A.No.15 of 2019, on the file of the Subordinate Judge, Melur, confirming the fair order and decretal order, dated 04.04.2018, rendered in I.A.No.1282 of 2017 in O.S.No.257 of 2012, on the file of the District Munsif, Melur.

For Petitioner : Mr.A.Rahul

For Respondent : No appearance



C.R.P(MD)No.2343 of 2019

WEB COPY

ORDER

The revision petitioner is the defendant in O.S.No.257 of 2012. The suit was decreed exparte and therefore, the revision petitioner filed an application in I.A.No.1282 of 2017, under Order IX Rule 13 C.P.C., along with an application in I.A.No.1281 of 2017, seeking to condone the delay of 161 days in filing the Order IX Rule 13 C.P.C application. The trial Court dismissed both the applications.

2. Aggrieved by the same, the revision petitioner preferred C.R.P(MD)No.984 of 2018, challenging the order refusing to condone the delay of 161 days in I.A.No.1281 of 2017 independently and the same was allowed on 07.06.2018. The revision petitioner preferred an appeal in C.M.A.No.15 of 2019, before the Sub Court, Melur, challenging the order in I.A.No.1282 of 2017. However, the C.M.A.No. 15 of 2019 came to be dismissed on 19.08.2019.

3. Challenging the said dismissal, the present Civil Revision Petition has been filed on the ground that when the delay had been



C.R.P(MD)No.2343 of 2019

condoned by this Court accepting the reasons assigned in the affidavit, as a natural consequenc, the Order IX Rule 13 application also ought to have been allowed on the very same reasons having been assigned in the affidavit in support of the said application as well.

4. I have heard Mr.A.Rahul, learned counsel for the revision petitioner. There is no representation for the respondent. In fact even on the earlier date, there was no representation on behalf of the respondent. Hence, the matter was listed today (ie.07.11.2023), under the caption “for orders”. Even today, there is no representation for the respondent.

5. I have gone through the order passed by the Sub Judge, Melur in C.M.A.No.15 of 2019 and also the order of this Court in C.R.P. (MD)No.984 of 2018. I have also perused the affidavits filed in support of the two applications (i) to condone the delay of 161 days and (ii) to set aside the exparte decree under Order IX Rule 13 C.P.C..

6. The affidavits filed in support of both these applications are identical in nature and the reasons assigned for non appearance are also one and the same. When this Court has accepted the reasons



C.R.P(MD)No.2343 of 2019

adduced by the revision petitioner and allowed the C.R.P.(MD)No.984 of 2018 and thereby, condoned the delay of 161 days, the First Appellate Court ought to have followed the said order in the C.R.P. and allowed the C.M.A.No.15 of 2019. Unfortunately, the First Appellate Court has proceeded to dismiss the Order IX Rule 13 C.P.C application, despite the order passed by this Court in C.R.P.(MD)No.984 of 2018, condoning the delay of 161 days. Having noticed the fact that the reasons assigned for the delay as well as the application to set aside the exparte decree were not different, but, on the contrary, one and the same, for this reason alone, the order of the Court below is liable to be set aside.

7. More over, I find that the suit is one for specific performance and the valuable rights of the revision petitioner are at stake and it is only fair and equitable that an opportunity is given to the revision petitioner to contest the suit on merits. Also, this Court has already accepted the reasons assigned by the revision petitioner to be satisfactory, while condoning the delay of 161 days. Therefore, under these circumstances, the Order IX Rule 13 C.P.C application also ought to have been allowed and the parties should have been directed to undergo a fulfleged trial.



WEB COPY



C.R.P(MD)No.2343 of 2019

8. For all the above reasons, the Civil Revision Petition is allowed and the order dated 19.08.2019 passed in C.M.A.No.15 of 2019, on the file of the Subordinate Judge, Melur, is hereby set aside. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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

07.11.2023

To

1. The District Munsif,
Melur.
2. The Subordinate Judge,
Melur.
3. .The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(MD)No.2343 of 2019

P.B.BALAJI,J.

Ls

C.R.P(MD)No.2343 of 2019

07.11.2023