



C.R.P.(PD)(MD).No.2630 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.2630 of 2022

and

C.M.P(MD) No.12818 of 2022

C.Thillai Selvam

... Petitioner / Respondent/
Plaintiff

-VS-

1. J.Gurumoorthy
2. V.Gowri

.... Respondents 1 and 2/
Petitioners 1 and 2/
Defendants 1 and 2

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the fair and decretal order, dated 28.07.2022 made in I.A.No.1 of 2022 in O.S.No.435 of 2011 on the file of the II Additional District Munsif Court, Tiruchirappalli.

For Petitioner : Mr.P.Arun Jayatarm



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ORDER

The present civil revision petition has been filed by the plaintiff in O.S.No.435 of 2011 challenging an order passed by the trial Court in condoning the delay of 1052 days in representing an application under Order 9 Rule 13 C.P.C.

2. The plaintiff had filed O.S.No.435 of 2011 for the relief of permanent injunction. The defendants had remained ex-parte and an ex-parte decree was passed on 17.10.2016. Within a period of 30 days, an application under Order 9 Rule 13 C.P.C was presented by the defendants on 14.11.2016. However, the said application was returned by the trial Court for rectification of certain defects. The said application was not represented in time and after a delay of 1052 days, application was represented along with I.A.No.1 of 2022 to condone the delay in representation.



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3. The defendants had contended that they have filed the application in time on 14.11.2016, however, it was returned. Thereafter, due to Covid – 19 Lockdown, he could not represent the same in time and it was represented only after the period of 1052 days.

4. However, the learned counsel appearing for the plaintiff had contended that there is no proof that the application under Order 9 Rule 13 C.P.C was presented on 14.11.2016.

5. The learned trial Judge, after considering both sides, has arrived at a finding that on 14.11.2016, the said application has been filed and it has been returned on 12.04.2017. Due to the Covid -Pandemic situation, the papers have not been represented and the trial Court has proceeded to condone the delay of 1052 days on condition to deposit a sum of Rs.2,000/- (Rupees Two Thousand only). This order is under challenge in the present Civil Revision Petition.

6. The learned counsel appearing for the revision petitioner had contended that the defendants have not proved that any application was



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presented on 14.11.2016. However, this Court finds that the learned trial Judge has personally perused the records and has arrived at a finding that the Court seal in I.A.No.1 of 2022 under Order 9 Rule 13 C.P.C. was affixed on 14.11.2016. Therefore, the contention of the learned counsel for the petitioner is not legally sustainable. The learned counsel for the petitioner further contended that the judgment is not an ex-parte judgment, but it is a judgment on merits.

7. I have perused the judgment only to find that the defendants side evidence has not been let in. When only a portion of the evidence has already been let in by the defendants, the learned Judge can adjudicate the matter on merits and the said decree can be considered to be a contested decree. All the cases where the defendants have not let in evidence at all, the decree can only be considered to be an ex-parte decree. In the present case, the defendants have not let in any evidence. Hence, the application under Order 9 Rule 13 C.P.C is perfectly maintained. Therefore, I do not find any merits in the revision petition.



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8. Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

15.02.2023

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

1. The II Additional District Munsif Court,
Tiruchirappalli.



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R.VIJAYAKUMAR,J.

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