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C.R.P.No.1118 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

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THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

C.R.P.No.1118 of 2024
and C.M.P.No.5805 of 2024

S.Gopinath .. Petitioner

Vs.

K.Ramasamy .. Respondent

Prayer:- Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the Order and Decreetal Order dated 07.10.2023 in IA No.2 of 2022 in IP No.4 of 2015 on the file the Hon'ble Sub Ordinate Judge at Rasipuram.

For Petitioner : Mr.I.Prakash Raj
For Sole Respondent : Mr.Nithyaesh Natraj
for Mr.Anirudh A Sriram

ORDER

This Civil Revision Petition has been filed challenging the order passed by the learned Sub Ordinate Judge at Rasipuram, in IA No.2 of 2022 in IP No.4 of 2015 dated 07.10.2023, thereby dismissing the application to condone the delay of 188 days and subsequently, the application filed to set aside the exparte decree was also dismissed.



2. The brief background of the case as follows:-

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The respondent initiated I.P.No.4 of 2015 and the said application was posted for evidence of the revision petitioner from 03.09.2021. As he had not appeared on 29.10.2021, an exparte order was passed. Finally, on 29.11.2021 an exparte decree was passed. To set aside the exparte decree, the petitioner filed an application to condone the delay of 188 days. The reason assigned by the petitioner to the effect that from 21.10.2021 to 26.10.2021, he was admitted in the Manipal Hospital, Salem for heart ailment. Therefore, he sought to condone the delay of 188 days.

3. The said application has been opposed by the respondent, on the ground that the application has been filed after a period of one year and in order to protract the proceedings, the application has been filed.

4. The Trial Court dismissed the application, on the ground that IP has been ultimately reached its finality in the year 2021, after a period of six years application is filed. Hence held that the condonation of delay is not permissible.

5. While dismissing the application under Section 5 of the Limitation Act, the application filed under Order IX Rule 13 of CPC is also dismissed.



6. The learned counsel for the petitioner would submit that the respondent was examined and when the matter was posted for the petitioner's side evidence, on 03.09.2021, the petitioner suffered with a heart ailment and was admitted as in-patient at Manipal Hospital, Salem. The fact remains that the medical certificate produced in this regard was not considered by the Trial Court. The Trial Court mainly dismissed the application on the ground that IP is six years old. Hence, it is contended that the sufficient reasons have been already adduced, but it has not been considered by the Trial Court.

7. The learned counsel appearing for the respondent would submit that as against the dismissal of the application filed to condone the delay and the application filed to set aside the exparte decree, the revision is not maintainable and only appeal is maintainable. Further, the delay has not been properly explained. Hence, he opposes the revision.

8. In support of his contention, he placed reliance of the Judgment reported in **2023 SCC OnLine SC 1662** in the case of ***Koushik Mutually Aided Cooperative Housing Society Vs Ameena Begum and another.***

9. I have perused the entire materials.



10. In the light of the above, when the materials are perused, application filed under Section 5 of Limitation Act and Order IX Rule 13 were dismissed in common order. The procedure adopted by the Trial Court in dismissing the application in the common order was not proper. While dismissing the applications, the Trial Court did not take into account the fact that the matter had been adjourned for the respondent's side evidence from 03.09.2021. On 29.10.2021, ex parte order was passed. The petitioner has provided clear reasons for his non appearance. According to him, due to a heart ailment, he was admitted into the Manipal hospital, Salem and necessary Medical Certificate was also produced before the Trial Court. However, the same has not been considered.

11. Despite the fact that the sufficient cause was shown, the Trial Court had simply rejected the application, on the ground that pendency of IP had been for more than six years. Therefore, this Court is of the view that the Trial Court's approach in this regard was not proper. However, if the consequent order under Order IX Rule 13 of CPC had been closed or dismissed in one line order, this Court would certainly entertained the revision. But now, the application filed under Order IX Rule 13 of CPC was also dismissed after detailed order. As against appeal only lie.



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12. As against the order passed in Order IX Rule 13 of CPC, the petitioner may file an appeal before the Sub Court and the period spent in this Court shall be excluded while entertaining the appeal. As far as the application filed under Section 5 of the Limitation Act is concerned, considering the fact that the petitioner was in the hospital for ten days at the relevant point of time, medical records were also filed and the sufficient cause has been shown before this Court. This Court is of the view that Trial Court reasoning to dismiss the application to condone the delay is required to be interfered.

13. Therefore, this Court is of the view that the procedure followed by the Trial Court is not in accordance with law. The applications filed under Section 5 of the Limitation Act and Order IX Rule 13 of CPC should have independently dealt. The term 'sufficient cause' provided under Section 5 is normally interpreted with a liberal approach. At the same time, under Order IX Rule 13 of CPC, it is required that the Court be satisfied that the party was prevented by any sufficient cause. These two applications ought to have been dealt independently. However, the procedure has been violated, leading to the situation where, against one order only revision is maintainable and against the other order only appeal is maintainable. Such situation arose only because of the



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order passed by the Trial Court without following the procedure particularly without deciding both the applications independently.

14. Accordingly, the order refusing condonation of 188 days delay in filing application passed by the learned Sub Ordinate Judge at Rasipuram, in IA No.2 of 2022 in IP No.4 of 2015 dated 07.10.2023, is hereby set aside. As far as the order passed under Order IX Rule 13, since it is appealable, liberty is granted to the revision petitioner to file an appeal before the appellate Court within 30 days from today. On such appeal filed, appellate Court shall consider the medical records and pass order within one month, thereafter.

15. In the result, this Civil Revision Petition stands partly allowed. Consequently, connected Miscellaneous petition is closed. No costs.

20.11.2024

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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To

The Sub Ordinate Judge at Rasipuram.



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N.SATHISH KUMAR, J.

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C.R.P.No.1118 of 2024
and C.M.P.No.15126 of 2024

20.11.2024