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C.R.P.NPD.No.1678 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2024

CORAM

THE HONOURABLE Mr. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.NPD.No.1678 of 2024

R.Sathiyarayanan

... Petitioner/Plaintiff

Vs

1. V.Ranganathan
2. R.Sakthivel
3. Jyothi
4. Saratha
5. The Senior Divisional Retail Sales Manager,
Indian Oil Corporation Limited,
No.234, 1st Floor, Salem-Banaglore Bye-pass Road,
Kondalampatti,
Salem 636 010

... Respondents / Defendants

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the Fair and Decretal Order of the Additional District Judge's Court at Dharmapuri, dated 26.10.2022 in I.A.No.01 of 2022 in I.A.No.245 of 2016 in O.S.No.18 of 2013.



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For Petitioner : Mr.P.Valliappan, senior counsel
for M/s.PV Law Associates

For Respondents
1 to 4 : Mr.K.Anbarasan

For Respondent-5 : Mr.R.G.Rohit

ORDER

This Civil Revision Petition is filed seeking to set aside the fair and decretal order dated 26.10.2022 in I.A.No.01 of 2022 in I.A.No.245 of 2016 in O.S.No.18 of 2013 on the file of the Additional District Court, Dharmapuri.

Brief facts:

2. The suit in O.S.No.18 of 2013 has been filed by the revision petitioner / plaintiff against the respondents 1 to 4 for partition and other reliefs. The petitioner had filed a petition in I.A.No.42 of 2016 seeking to



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amend the plaint and the same came to be dismissed by the trial Court on 05.04.2016, against which, the petitioner had preferred a revision before this Court in C.R.P(PD).No.1264 of 2016. During the pendency of the revision, the above suit was posted for cross-examination of defendants. Since the petitioner was unable to cross-examine the defendants, the suit was dismissed for default on 01.08.2016. Thereafter, the petitioner had filed a petition in I.A.No.245 of 2016 seeking to restore the suit, during the pendency of the above revision petition. The trial Court had insisted the petitioner to produce the copy of the stay order of this Court. Since the petitioner's previous counsel had not informed about the stage of the revision petition, the petitioner could not proceed with I.A.No.245 of 2016. Therefore, the said I.A was dismissed for default on 03.10.2019.

3. It is the case of the petitioner that he came to know about the dismissal of the said I.A only during the last week of December 2021. In the meanwhile, C.R.P.No.1264 of 2021 was dismissed on 23.11.2021 granting liberty to the petitioner/plaintiff to approach the Court after restoration of



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the suit. Thereafter, the petitioner filed a petition in I.A.No.01 of 2022 to condone the delay of 799 days in filing the petition to restore I.A.No.245 of 2016.

4. Before the trial Court, the respondents 1 to 4 had filed a counter. The trial Court, finding that the petitioner had not shown any sufficient cause to condone the huge delay of 799 days, had dismissed the petition on 26.10.2022. Challenging the same, the present revision has been filed by the plaintiff.

5. Mr.P.Valliappan, learned Senior Counsel appearing on behalf of the petitioner submitted that the suit has been filed against the respondents 1 to 4 who are none other than the petitioner's parents and siblings. Due to miscommunication with his counsel at Chennai and the on-set of Covid-19, there had been a delay of 799 days in pursuing I.A.No.245 of 2016. He further submitted that the right of the petitioner would be defeated and no prejudice would be caused to the respondents 1 to 4, if the delay is



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condoned and the suit is restored to file. He further submitted that the petitioner is ready and willing to compensate the respondents for the inconvenience caused to them and he is also ready to cooperate with the trial for early disposal of the suit.

6. Per contra, learned counsel appearing for respondents 1 to 5 submitted that since the petitioner had not shown any sufficient cause for the huge delay of 799 days, the trial Court had rightly dismissed the petition. He further submitted that the petitioner, in order to protract the proceedings, had wilfully delayed the matter and hence, he objected for condonation of delay.

7. The learned counsel for the 5th respondent submitted that he is only a formal party. However, he submits that the trial Court had rightly dismissed the petition.

8. Heard the learned counsel on both sides and perused the materials



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available on record.

9. The suit O.S.No.18 of 2013 has been filed by the petitioner against respondents 1 to 4 who are his parents and siblings. Though the trial Court found that the petitioner had not shown sufficient cause for the delay of 799 days, this Court is of the opinion that since the suit is for partition and the dispute is among the family members, one more opportunity can be given to the petitioner to contest the case in the interest of justice. The delay of 799 days shall be condoned on imposition of costs. Accordingly, the Civil Revision Petition is allowed. The order passed in I.A.No.01 of 2022 in I.A.No.245 of 2016 in O.S.No.18 of 2013 is set aside on condition that the petitioner deposits a sum of Rs.20,000/- (Rupees twenty thousand only) before the trial Court within a period of two weeks from the date of receipt of a copy of this order. On such deposit being made, the Court below shall take I.A.No.245 of 2016 for enquiry and after issuing fresh notice to respondents therein, the Court shall pass orders on merits and in accordance with law within a period of one month thereafter. It is made clear that the petitioner shall cooperate for the speedy disposal of



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I.A.No.245 of 2016. The amount of Rs.20,000/- that would be deposited by the petitioner, shall be disbursed by the trial Court to respondents 1 to 4, in equal proportion, i.e Rs.5,000/- each. There shall be no order as to costs.

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Index : Yes/No
Speaking order/non-speaking order
srn

To

1. The Additional District Judge's Court at Dharmapuri,
2. The Section Officer,
V.R.Section,
High Court, Madras.



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A.D.JAGADISH CHANDIRA, J.,

srn

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