



CRP No.549 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

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R.Karunakaran

... Petitioner

Vs.

R.Kalavathy

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order in IA No.1 of 2023 in A.S.Sr No.10358 of 2023, dated 02.12.2023 passed by the learned Principal Judge, City Civil Court, Chennai.

For Petitioner : Mr.M.Aravind Subramaniam
Senior Counsel
for Ms.K.Dheepakshi

For Respondent :Mr.S.Nambirajan



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ORDER

The civil revision petition is filed to set aside the order in IA No.1 of 2023 in A.S.Sr No.10358 of 2023, dated 02.12.2023 passed by the learned Principal Judge, City Civil Court, Chennai

2. The revision petitioner is the appellant and respondent is the respondent in AS SR No.10358 of 2023 on the file of the Principal Judge, City Civil Court, Chennai and the revision petitioner is the defendant and the respondent is the plaintiff in OS No.3880 of 2019 on the file of the XV Assistant Judge, City Civil Court, Chennai. The suit was filed by the plaintiff/respondent for recovery of possession. The suit was decreed on 25.08.2022 as prayed for by the respondent. Aggrieved by the said judgment and decree, the revision petitioner had preferred an appeal and which was received in SR No.22678 of 2022 but the papers were misplaced. Subsequently, the revision petitioner has filed an appeal in AS SR No.10358 of 2023 challenging the judgment and decree in OS No.3880 of



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2019 along with an application in IA No.1 of 2023 to condone the delay of 311 days in filing the appeal, which was dismissed by the learned Judge by holding as follows:

'In this case, the petitioner/defendant has simply raised an allegation against the Registry without any material. Therefore, the court is of the considered view that the delay was caused due to the fault of the petitioner and the Registry cannot be blamed for the same. Since the petitioner/defendant has not restored the earlier copy application, the 2nd application is not maintainable in law. The other reason stated by the petitioner that he went through an eye surgery is not considered since the petition itself is not maintainable and this point is answered accordingly. "

3. Challenging the order dated 02.12.2023, the petitioner has filed the present civil revision petition.

4. Learned counsel for the petitioner submits that since the earlier appeal papers in AS SR No.22678 of 2022 has been misplaced by the Registry and not able to furnish any proof, the petitioner has filed



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another appeal in AS SR No.10358 of 2023 with a delay of 311 days. Being the first statutory appeal, he seeks that the delay may be condoned and the appeal may be permitted to taken on file and allow the Revision.

5. Learned counsel for the respondent objected to the said contention and further contended that the petitioner though stated in the affidavit that the earlier AS SR No.22678 of 2022 has been misplaced by Registry but failed to provide any proof for that allegation. Under these circumstances, filing another appeal in AS SR No. No.10358 of 2023 is unsustainable without restoring the earlier appeal. There is no merit in the revision and hence he seeks for the dismissal of the revision.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. The revision petitioner is the appellant and respondent is the respondent in AS SR No.10358 of 2023 on the file of the Principal Judge,



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City Civil Court, Chennai and the revision petitioner is the defendant and the respondent is the plaintiff in OS No.3880 of 2019 on the file of the XV Assistant Judge, City Civil Court, Chennai. The suit was filed by the plaintiff/respondent for recovery of possession. The suit was decreed on 25.08.2022 as prayed for by the respondent. Aggrieved by the judgment and decree, he preferred an appeal, which was received by the Registry in AS SR No.22678 of 2022. The petitioner's copy application for getting judgment and decree was also struck off on 01.12.2022. Under these circumstances, his earlier appeal papers were misplaced. According to the petitioner, it was misplaced by the Registry but there is no proof to show that the Registry has misplaced the papers and there is no complaint preferred by the petitioner. Anyhow, the papers filed in AS SR No.22678 of 2022 is not available now. Therefore, the petitioner filed another appeal in AS Sr No. 10358 of 2023 with a delay of 311 days. The appeal is first statutory appeal. A chance has to be given to the petitioner to place his grievance and aggrieved over the judgment and decree in OS No.3880 of 2019. One right of appeal has always been accepted, and appropriate steps



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must be taken to effectuate that right. The considerations on account of delay and limitation ought not to negate the right of appeal. Hence, on technical ground, the statutory appeal available to the petitioner cannot be denied. Therefore, the impugned order dated 02.12.2023 is hereby set aside. The delay is condoned and the civil revision petition is allowed. The trial court is hereby directed to number the appeal, if it is otherwise in order. There shall be no order as to costs. Consequently, CMP No.2685 of 2024 is closed.

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Index: Yes/No
Internet: Yes/No
mrn

Issue order copy by 07.03.2024

To
The Principal Judge, City Civil Court, Chennai.



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V.SIVAGNANAM, J.

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