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C.R.P.No.564 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.564 of 2021

A.K.Mathiyazhagan

... Petitioner

Vs.

S.R.Premsanth

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order in I.A.No.1 of 2019 in O.S.No.25 of 2017 dated 19.11.2019 on the file of the Sub-Ordinate Judge,Sathiyamangalam

For Petitioner : Mr.E.C.Ramesh
For Respondent : Ms.Preethi S.Arasu
for M/s.G.Mani Prabhu

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the petition filed to condone the delay of 242 days in filing petition to restore the suit.



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2.The petitioner herein filed a suit for recovery of money and the same was dismissed for default owing to his non-appearance on 09.10.2018. Thereafter, the petitioner filed application to restore the suit on 26.06.2019 with petition to condone the delay of 242 days in filing such application.

3. In the affidavit filed in support of the condone delay petition, it was stated by the petitioner that on the date of hearing of suit, he was out of station due to some urgent work. Hence, he failed to attend the Court. It was further stated that immediately after acquiring knowledge about the dismissal of the suit for default, he filed the instant application.

4.The Trial Court held that petitioner was an Advocate and hence, the reason assigned by him for condoning the delay was not acceptable and dismissed the same.

5. It is seen from the records that the suit was decreed *exparte* for failure of the respondent to appear on 30.10.2017. Thereafter, on application filed by



the respondent, the *ex parte* decree was set aside and suit was posted for hearing. Taking into consideration the petitioner is not going to gain anything by allowing the suit to be dismissed deliberately and also the fact that earlier due to the default of respondent, the suit was decreed *ex parte*, this Court is inclined to take a liberal approach while considering the condone delay petition.

6. It is settled law that when there is a conflict between the substantial rights of the parties and the procedural law, former will prevail over the latter. Therefore, this Court is inclined to condone the delay by imposing cost on the petitioner.

7. It is made clear that the petitioner is not entitled to claim interest from date of dismissal of the suit for default and the date of disposal of the revision, in case the suit is decreed after restoration.

8. In view of the discussions made earlier, the Civil Revision Petition is allowed on condition that petitioner shall deposit a sum of Rs.5000/- (rupees



five thousand only), towards cost to the respondent, to the credit of O.S.No.25 of 2017 on the file of Sub-Court, Sathyamangalam within a period of two weeks from the date of receipt of a copy of this order. In case, the petitioner failed to deposit the said amount within the time stipulated, the civil revision petition shall automatically stand dismissed without further reference to the Court. On payment of the cost, the Civil Revision Petition stands allowed. The Trial Court is directed to take up the petition for restoration of the suit and dispose of the same in accordance with law.

9. It is also made clear that in case the suit is restored to the file and a decree is passed in favour of petitioner, the petitioner is not entitled to claim interest for a period from 09.10.2018 to 07.03.2024 (date of dismissal of the suit for default and the date of disposal of the civil revision petition).

10. The respondent is entitled to withdraw the cost deposited by the petitioner by making formal application before the Trial Court.



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11. With these directions, the Civil Revision Petition stands allowed. No costs.

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Index : Yes / No
Internet : Yes / No
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To

The learned Sub-Ordinate Judge, Sathiyamangalam



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S.SOUNTHAR, J.

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