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C.R.P.(PD).No.2414 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2414 of 2012
and M.P.No.1 of 2012

1.Thayammal
2.Indrani
3.Savitri

... Petitioners

vs.

Suresh Kumar

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, dismissing the application filed by the petitioners in I.A.No.535 of 2011 in O.S.No.539 of 2006 on the file of the Principal District Munsif, Erode, dated 04.06.2012 to contest the suit on merits, is contrary to law, manifestly erroneous and unjust.

For Petitioner	: Mr.M.Sachin Vijay
For Respondents	: Mr.M.Guruprasad for M/s.M.R.Sivakumar for R1 and R2 No appearance for R3



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ORDER

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The Civil Revision Petition is filed challenging the order passed by the trial Court dismissing the application filed by the petitioner seeking to condone the delay of 1465 days in filing the petition to set aside the ex-parte decree.

2. In the affidavit filed in support of the condone delay petition, it was stated by the petitioner that the ex-parte decree was passed against him on 08.03.2007 due to inability of his counsel to appear before the Court as he was engaged in another Court. It was further stated by the petitioner that on the very same day he filed an application to set aside the ex-parte decree in CFR.No.3752 of 2007 and the said application was neither numbered nor returned. As the earlier petition filed by the petitioner was untraceable in the Court record section, the petitioner was constrained to file a fresh petition to set aside the ex-parte decree with condone delay petition.

3. The said application was dismissed by the Court on the ground that the petitioner failed to produce any document to show that he



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really filed a petition to set aside the ex-parte decree in CFR.No.3752 of 2007. When petitioner mentioned filing number, the trial Court should have verified the records and found whether really any application was filed by the petitioner as claimed by him. Therefore, the impugned order passed by the trial Court dismissing the application without verifying its record is liable to be set aside.

4. Accordingly, the Civil Revision Petition is allowed by setting aside the impugned order and the matter is remitted back to the file of the trial Court with a direction to find out whether the petitioner filed any application in CFR.No.3752 of 2007 as claimed by him and in the light of said findings dispose of the application for condoning delay afresh in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

27.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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S.SOUNTHAR, J.

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To

The Principal District Munsif,
Erode.

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