



C.R.P.No.4554 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.4554 of 2024

Vijayalingam Velupillai

.. Petitioner

Vs.

1.M/s.White House,
Represented by its Managing Partner,
M.A.Wajeed,
No.1096, E.V.R.Periyar Road,
Periamet, Chennai – 600 003.

2.M.A.Wajeed,
Managing Partner,
M/s.White House,
No.1096, E.V.R.Periyar Road,
Periamet, Chennai – 600 003.

3.Yunus,
Chief Financial Officer,
M/s.White House,
No.1096, E.V.R.Periyar Road,
Periamet, Chennai – 600 003.

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the code of Civil Procedure, to set aside the order and decretal order dated 23.06.2023,



C.R.P.No.4554 of 2024

passed in I.A.No.2 of 2022 in O.S.No.4421 of 2019, on the file of the XVIII Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.K.Venkatesan

For Respondents : Mr.K.V.Babu
for Mr.H.Mubarak Jan

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 23.06.2023, passed in I.A.No.2 of 2022 in O.S.No.4421 of 2019, on the file of the XVIII Additional Judge, City civil Court, Chennai.

2.The brief facts of the case are as follows:

2.1.The suit has been filed by the petitioner/plaintiff for recovery of sum of Rs.75 Lakhs from the respondents/defendants. In the suit the petitioner was examined as P.W.1., he had also filed proof affidavit and thereafter, the matter was posted for cross examination on 05.04.2022. As the petitioner had not appeared on that day, the suit came to be dismissed. Therefore, the petitioner filed application to condone the delay of 26 days on



C.R.P.No.4554 of 2024

the ground that he travelled to Srilanka in the month of January 2022 and he could not return to India due to severe economic crisis prevailed in Srilanka and therefore, he could not attend the Court. However, the Trial Court dismissed the application filed for condonation of the delay stating that the delay is not 26 days but 191 days. In view of the dismissal of condone delay application, the application filed by the petitioner under Order 9 Rule 9 CPC, to restore the suit also came to be dismissed. Aggrieved over the same, the present Civil Revision Petition has been filed.

3.The learned counsel appearing for the petitioner submitted that the application for condonation of the delay has been filed within 30 days from the date of dismissal. The Revision has been filed after dismissal of the application filed under Section 5 of the Limitation Act. It is to be noted that the petitioner has not challenged the order dismissing the application filed under Order 9 Rule 9 CPC for restoration of the suit which was dismissed for default. Since the application to condone the delay has been dismissed, consequently, the application filed under Order 9 Rule 9 CPC also came to be dismissed on the same date without any adjudication on merits.



C.R.P.No.4554 of 2024

4. Heard the learned counsel appearing for the petitioner as well as the

respondent and perused the materials available on record.

5. Now we are dealing with the revision filed against the order rejecting the application filed under Section 5 of the Limitation Act, seeking to condone the delay. Though the respondent made argument that Order 9 Rule 9 CPC application is dismissed, the revision is not maintainable, the fact remains that of course any order rejecting the application filed under Order 9 Rule 9 CPC is appealable order and no revision would lie, at the same time, this Court is of the view that for the purpose of filing the appeal against the order of dismissal of the application filed under Order 9 Rule CPC, there should be proper adjudication in the said application, but in the present case, there is no proper adjudication done in the application filed under Order 9 Rule 9 CPC.

6. The contention raised by the respondents as regards the delay, is not genuine in the present case. The very approach of the Court below in dismissing Section 5 application, in the opinion of this Court, is patent



C.R.P.No.4554 of 2024

illegal. In fact, the application, seeking for restoration of the suit which was dismissed for default, has been filed in time within 30 days, i.e. within the limitation for filing the application to restore the suit, i.e. 30 days from the date of dismissal of the suit for default. At any event, the application ought to have been filed on 05.05.2022, but the fact remains that from 01.05.2022 to 31.05.2022, there was summer vacation and the Court was not functioning. In such view of the matter, the application ought to have been filed on the very next working day, i.e. on 01.06.2022. But the application was filed on 02.06.2022, as such, the delay was only 1 day. Whereas, the trial Court has ordered that the Registry is directed to calculate the delay for the vacation date also. This approach is not correct. The delay is only one day. The trial Court ought to have given liberal approach in condoning the delay. Merely because the petitioner travelled Srilanka and other countries which prompted him to remain absent, which cannot be put against him to defeat the suit proceedings.

7.As and when Application under Section 5 of the Limitation Act is filed by the parties, seeking to condone the delay in filing the application to



C.R.P.No.4554 of 2024

set aside ex-parte or for restoration of suit, the Court below shall not number both the applications simultaneously. Numbering both application simultaneously leads to various consequences. For example, after dismissing the Section 5 of the Limitation Act, consequently, the trial Court used to dismiss the application filed seeking to set aside ex parte orders or for restoration of the suits without any adjudication therein, by which, though there is appeal remedy, the parties are unable to appeal the said order in the absence of speaking order on merits. As regards the orders passed in the delay condone applications filed under Section 5 of the Limitation Act, the aggrieved parties can question the same by way of revision before this Court. However, as regards the orders passed in the applications filed under Order 9 rule 9 CPC, etc., there is appeal remedy available for the parties under Order 42 Rule 3(1) CPC. Further, as per Section 115(2) CPC, even in the Revision High Court cannot reverse or vary any decree or order that can be appealed to the High Court or a subordinate court unless subordinate court acted illegally or with material irregularity or exercised jurisdiction that was not vested in it by law or failed to exercise jurisdiction that was vested in it.



C.R.P.No.4554 of 2024

8. Therefore, for the reasons stated above, the Revision Petition is allowed and the order dated 23.06.2023 in I.A.No.2 of 2022 in O.S.No.4421 of 2019 passed by the trial Court, is set aside and the suit is ordered to be restored to file. On such restoration, the trial Court is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order. No costs.

14.11.2024

rst

Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order

To:

The XVIII Additional Judge,
City civil Court, Chennai.



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C.R.P.No.4554 of 2024

N.SATHISH KUMAR, J.

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C.R.P.No.4554 of 2024

14.11.2024