



C.R.P.No.965 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.965 of 2021

K.Gopalakrishnan

... Petitioner

Vs.

Tmt.Kanagajothi (died)

1.Thiru S.M.Sampath Kumar

2.Thiru.Ramesh Kumar

3.S.M.Rajmohan

4.S.M.Ravi @ Ravikumar

5.M/s.State Bank of India

Represented by its Branch Manager,

Agricultural Development Branch,

Sathyamangalam-638 402

6. Sellammal (Died)

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 10.12.2020 in I.A.No.76 of 2014 in O.S.No.209 of 2008 on the file of the III Additional District and Sessions Judge, Erode at Gobichettipalayam and consequently, allow the same.

For Petitioner

:M/s.G.Lavanya

for Mr.T.Sai Krishnan



C.R.P.No.965 of 2011

For respondent 1 &4	: served-no appearance
For respondent 2 & 3	: M/s.Zeenath Begum
For respondent 5	: Mr.Ragavulu Naidu

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioner to condone the delay of 556 days in filing petition to restore the suit.

2. The petitioner herein filed a suit for specific performance of agreement dated 10.11.2006. The said suit was dismissed for default on 14.06.2012 owing to the non-appearance of the petitioner. Thereafter, the petitioner filed the instant application for restoration of the suit on 22.01.2014 with the petition to condone the delay of 556 days. Not satisfied with the reasons assigned by the petitioner, the Trial Court dismissed the same. Aggrieved by the order, the petitioner is before this Court.

3. In the affidavit filed in support of the condone delay petition, it was stated by the petitioner that at the relevant point of time, he was affected by Jaundice and he was admitted in the hospital at Kerala. Therefore, he could not inform his counsel about his illness and as a consequence, the suit was



dismissed for default. It is further stated by the petitioner that he has been in medication for 10 months and doctor advised him to take complete rest for a period of more than six months thereafter. It is also stated that after recovery, he could not raise funds for meeting out the litigation and hence, there is delay of 556 days in filing petition to restore the suit.

4. The Trial Court dismissed the application mainly on the ground that petitioner failed to show sufficient cause for condoning the delay.

5. In the affidavit filed in support of the condone delay petition, it is stated by the petitioner that at the relevant point of time, he was affected with Jaundice and he had been taking treatment at Kerala. It is settled law that when there is a conflict between the substantial rights of the parties and the procedural law, the former will prevail over the latter.

6. The petitioner herein filed a suit for specific performance of the sale agreement. By allowing the suit to go for default or by dragging on the proceedings, the petitioner is not going to gain anything. In such



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circumstances, this Court is inclined to take liberal view of the matter and afford an opportunity to the petitioner to prosecute the case on merits.

Therefore, the order impugned in this civil revision petition is set aside.

7. Accordingly, the Civil Revision Petition stands allowed on condition that the petitioner shall deposit a sum of Rs.10,000/- (Rupees Ten Thousand Only) to the credit of O.S.No.209 of 2008 on the file of the learned III Additional District and Sessions Judge, Erode, within a period of three weeks from the date of receipt of copy of this order. Failing which, the civil revision petition shall stand automatically dismissed without further reference to this Court. In case, the cost is deposited, the respondents are permitted to withdraw the cost by making formal application before the Trial Court. The cost shall be divided equally among the respondents. No costs.

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Index : Yes / No

Internet : Yes / No

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To

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The learned III Additional District and Sessions Judge, Erode.



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S.SOUNTHAR, J.

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