



C.R.P.(NPD).No.962 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.962 of 2021

and

C.M.P. No.7746 of 2021

A.Ravichandran

... Petitioner

Versus

M/s.Draupathi Krishnabharathi Trust,

Rep.by its trustee

K. Venkatesalu

Door No.AC-84, Anna Nagar,

Chennai – 600 040.

Also at No.138, Rangai Gowder Street,

Coimbatore – 641 001.

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 14.10.2020 made in I.A.No.301 of 2019 in O.S.No.72 of 2014 on the file of the III-Additional Subordinate Court, Coimbatore.

For Petitioner : Mr. N. Krishnakumar,
for M/s. Sarvabhauman Associates

For Respondent : (Died)



C.R.P.(NPD).No.962 of 2021

ORDER

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This Civil Revision Petition is filed challenging the order passed by the Trial Court allowing the application filed by the respondent in I.A.No.301 of 2019 seeking to condone the delay of 470 days in filing the petition to restore the suit in O.S.No.72 of 2014 filed before the III-Additional Subordinate Court, Coimbatore, which was dismissed for default on 27.07.2018.

2. The respondent herein filed a suit for declaration that Will dated 06.09.2001 executed by one Draupathi Krishna Bharathi, bequeathing the suit item No.1 & 2 in favour of the respondent Trust was true, genuine and valid. The respondent also sought for declaration that Will dated 29.10.2004 executed by the said Draupathi Krishna Bharathi, bequeathing the suit item No.1 & 2 in favour of the petitioner herein was not true, genuine document and unenforceable in law. The respondent also sought for permanent injunction restraining the petitioner from encumbering the property or dispossessing the respondent by force in respect of the Item No.III of the suit properties. The said suit was dismissed for default on 27.02.2018, hence, the respondent filed an application to restore the suit along with the petition to condone the delay of 470 days in filing an application for restoration.



C.R.P.(NPD).No.962 of 2021

WEB COPY

3. In the affidavit filed in support of the condone delay petition, it was stated by the respondent/trustee that he was aged 79 years old and due to his advanced age, he was ailing with age related illness. It was further stated that during the month of July 2018 suddenly, he fell ill and hence, he could not contact his counsel. As per advice tendered by his Doctor, he had taken bed rest and he could not instruct his counsel to get along with the suit.

4. The Trial Court taking into consideration, the suit is regarding title dispute in respect of an immovable property, had taken liberal approach and accepted the reasons assigned by the respondent and condoned the delay of 470 days in filing the petition to restore the suit, which was dismissed for default, by imposing the costs of Rs.3,000/- to the respondent.

6. It is well settled law that if there is a conflict between the procedural law and the substantial rights of the parties, the latter will prevail over the former. In this case, when the Trial Court had chosen to exercise its discretion in favour of the respondent by accepting the reasons assigned, by



C.R.P.(NPD).No.962 of 2021

WEB COPY

imposing the costs, this Court is not inclined to interfere with the said decision in the absence of any apparent error. Hence, the Civil Revision Petition is dismissed. No Costs. Having regard to the fact that the suit is of the year 2014, the Trial Court is directed to dispose of the suit as expeditiously as possible. Consequently, the connected miscellaneous petition is also closed. No Costs.

14.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Case Citation : Yes / No

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To:

The III-Additional Subordinate Court, Coimbatore.



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C.R.P.(NPD).No.962 of 2021

S. SOUNTHAR. J.,

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C.R.P.(NPD).No.962 of 2021
and
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