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CRP No.1633 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

C.R.P. No.1633 of 2024

A.Rajasekar

... Petitioner/Plaintiff

Vs

1.Tmt.N.Kothai

2.Mr.B.Chandrasekaran ... Respondents/Defendants

Prayer : Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 24.11.2023 made in I.A.No.2 of 2022 in OS.No.221 of 2012 on the file of the Principal Subordinate Judge, Kancheepuram.

For Petitioner : Mrs.N.K.Kandhimathi

For Respondents : No Appearance for R2

ORDER

This Civil Revision Petition is filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 24.11.2023 made in I.A.No.2 of 2022 in OS.No.221 of 2012 on the file of the Principal



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Subordinate Judge, Kancheepuram.

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2. The petitioner/plaintiff filed a Civil Suit in O.S.No.221 of 2012 seeking declaration and permanent injunction against the defendants restraining them from in any way interfering with the petitioner/plaintiff's peaceful possession and enjoyment of the property. The said Suit was dismissed for non prosecution on 06.01.2020. Thereafter the petitioner/plaintiff filed an application in I.A.No.2 of 2022 to condone the delay of 812 days in filing the restoration application. In the said application, the petitioner/plaintiff stated that the petitioner/plaintiff was bedridden with high diabetic and high blood pressure, he was unable to contact his counsel and further due to COVID-19 Pandemic, he was unable to move out, but the same was not considered by the Trial Court and dismissed the said Application to condone the said delay of 812 days for the reason that no medical records produced to substantiate his version. Aggrieved against the same, the present Civil Revision Petition filed.

3. The learned counsel appearing for the petitioner produced a judgment of the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.3 of 2020, dated 10.01.2022, and submitted that the Hon'ble Supreme



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Court had excluded the dates from 15.03.2020 till 28.02.2022, as the period of exclusion in computing the limitation due to COVID 19 Pandemic. The learned counsel further submitted that the same was not considered by the Trial Court and if the same is taken into consideration, there would be a delay of condonation only for 90 days.

4. Notice was served on the respondents and their names printed in the cause list, none appeared for the respondents either in person nor through a counsel. Hence, this Court is of the view that the respondents have no serious objection.

4.Heard the learned counsel appearing for the petitioner and perused the materials placed on record.

5.Considering the submissions made by the learned counsel appearing for the petitioner and the materials placed on record before this Court, the petitioner's health condition, medical records filed in the typed set of papers, which would show that the petitioner was under medication and taking treatment from the year 2012 regularly for various health



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ailments and taking into consideration the judgment of the Hon'ble Supreme Court as stated supra, it is seen that the actual delay was only for 90 days and therefore, this Court is of the view that the Trial Court failed to consider the same. Hence, this Court is inclined to set aside the impugned order and direct the Trial Court to restore the Civil Suit in O.S.No.221 of 2012 and hear the matter afresh to give an opportunity to the petitioner/plaintiff as well as the respondents/defendants and after hearing them, pass a reasoned order on merits and in accordance with law by dealing with all factual contentions raised by both the parties as expeditiously as possible.

6.The Civil Revision Petition is allowed on the above terms.

However, there shall be no order as to costs.

06.06.2024

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Index : Yes/No

Internet :Yes/No



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M.NIRMAL KUMAR, J
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To
The Principal Subordinate Judge, Kancheepuram

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