



C.R.P.(NPD).No.1395 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.1395 of 2021

K.Suresh

... Petitioner

VS

S.P.Raman

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order passed in I.A.No.1 of 2020 in O.S.No.70 of 2015 on the file of the learned District Munsif Cum Judicial Magistrate, Walajapet, Vellore and condone the delay of 610 days occasioned in filing the petition under Order 9 Rule 13 of CPC.

For Petitioner : M/s.R.K.Sekina Reshma

For Respondent : Ms.Rukmani R.V.
for M/s.PB.Ramanujam Associates



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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 to condone the delay of 610 days in filing a petition seeking to set aside the *ex parte* decree passed against the petitioner on 30.11.2018.

2. The respondent herein filed a suit seeking declaration of his title and possession in respect of his half share in the suit property and for permanent injunction restraining the petitioner herein from interfering with his peaceful possession and enjoyment of the suit property. The said suit was decreed *ex parte* on 30.11.2018. Thereafter, the petitioner herein filed an application to set aside the *ex parte* decree along with condone delay petition on 31.08.2020. In the affidavit filed in support of the condone delay petition, it was stated by the petitioner that immediately after receipt of suit summons, he engaged a counsel and filed his written statement in the year 2015 itself and his counsel advised him to contact him only if he received information regarding trial in the suit. It was further stated by the petitioner that believing the words of his



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counsel, he did not contact his counsel continuously. It was further stated by the petitioner that in the meantime, he was affected by Jaundice and he was taking native treatment for the same. After recovery from the decease, the petitioner enquired about the status of the case with his previous counsel, then only he was informed about the *exparte* decree dated 30.11.2018 passed against him. Immediately, he had taken steps to file a petition to set aside the *exparte* decree. The Trial Court dismissed the application on the ground that the illness pleaded by the petitioner was not sufficient to explain the long delay of 610 days.

3. Having regard to the fact the suit is with regard to title dispute in respect of immovable property, this Court is inclined to take a liberal approach. In the affidavit filed in support of the condone delay petition, it was asserted by the petitioner that he engaged a counsel in the year 2015 itself and as per his advise, he was waiting for a letter from his counsel regarding trial. However, after sometime, he was informed about the *exparte* decree passed against him. The petitioner asserted that his counsel directed him to meet him only after receipt of a letter intimating the date of Trial. In



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such circumstances, this Court feels an opportunity shall be given to the petitioner to defend the case on merits.

4. Accordingly, the impugned order passed by the Trial Court is set aside and Civil Revision Petition is allowed on condition that the petitioner shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) towards costs to the respondent within period of three weeks from today. The amount shall be deposited to the credit of O.S.No.70 of 2015 on the file of the District Munsif-cum-Judicial Magistrate, Walajapet. The respondent is also permitted to withdraw the cost. In case, the petitioner fails to deposit the amount within the time stipulated, the Civil Revision Petition shall stand automatically dismissed. On payment of the amount within the time stipulated, the Trial Court is directed to take up the petition to set aside the *ex parte* decree and dispose of the same in accordance with law, as expeditiously as possible. No costs.

23.02.2024

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

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Note: Issue order copy on 01.03.2024.

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To

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The District Munsif Cum Judicial Magistrate,
Walajapet, Vellore.



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S.SOUNTHAR, J.

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