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C.R.P.(PD)No.2662 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2662 of 2024

A.Venkatesh

.. Petitioner

Vs.

1.V.Sivakumar

2.V.Harikrishnan

.. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order, dated 16.02.2024, made in Unnumbered I.A.SR.No.649 of 2024 in I.A.No.1 of 2021 in O.S.No.105 of 2015 on the file of the learned Additional District Judge at Chengalpattu.

For Petitioner : Mr.S.Vijayakumar

ORDER

The present Civil Revision Petition seeks a direction to set aside the order passed by the learned Additional District Judge at Chengalpattu in I.A.SR.No.649 of 2024 in I.A.No.1 of 2021 in O.S.No.105 of 2015 dated 16.02.2024.



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2. O.S.No.105 of 2015 is a suit for partition and separate possession.

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3. In the said suit, an *ex parte* decree was passed by the Court. To set aside the same, along with the condonation of delay application, the 1st defendant filed an application before the learned Additional District Judge at Chengalpattu in I.A.No.1 of 2021. The said application was allowed on 05.01.2024 on the condition that the cost of Rs.2,000/- must be paid by the petitioner/1st defendant to the 1st respondent/plaintiff on or before 30.01.2024, failing which the petition was directed to be dismissed automatically.

4. These applications to condone the delay and set aside were moved in the year 2021 and were kept pending till 2024. In the meantime, the petitioner's wife one Banumathi passed away at Andhra Pradesh on 17.11.2023. Therefore, the petitioner was not able to contact his counsel. He would state that on his return from Andhra Pradesh on 01.02.2024, he contacted his counsel who informed him that as the cost has not been paid, the petition was dismissed. Apart from that, he also returned the bundle to the civil revision petitioner.



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5. Thereafter, the civil revision petitioner filed an application to restore in I.A.SR.No.649 of 2024 under Order IX Rule 4 of the Code of Civil Procedure. This petition was dismissed by the trial Court without numbering on the ground that the petition is not maintainable as the conditional order was not complied. This petition was filed along with an application in I.A.SR.No.3095 of 2024. The said petition in I.A.SR.No.3095 of 2024 has been filed under Section 148 read with Section 151 of the Code of Civil Procedure.

6. The learned counsel for the petitioner would submit that due to the reasons beyond his control, the order passed in I.A.No.1 of 2021 came to be dismissed. He would plead that if an opportunity is granted to him, he would certainly make the payment and proceed with the suit.

7. The view of the learned trial Judge that since the conditional order has not been complied, the petition for extension of time is not maintainable is contrary to the judgment of this Court in ***Gowri Ammal vs. Murugan and Others [(2006) 3 CTC 418]***. The Division Bench had held that even after



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the time has expired, the Court retains its jurisdiction to extend the time.

Nonetheless, since the learned trial Judge has not ordered notice, I am constrained to interfere with the order.

8. Accordingly, the order, dated 16.02.2024, returning the petition filed under Order IX Rule 4 of the Code of Civil Procedure as well as the petition under Section 148 of the Code of Civil Procedure is set aside. The learned Additional District Judge at Chengalpattu shall number the application and issue notice to the plaintiff and receive a counter, if necessary, and thereafter, proceed to pass orders in accordance with law. Accordingly, the Civil Revision Petition stands allowed. No costs.

19.07.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

Note : Registry is directed to return the original of the petition to the learned counsel for the petitioner.



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V. LAKSHMINARAYANAN, J.

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To

The learned Additional District Judge,
Chengalpattu

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19.07.2024