



C.R.P.No.2708 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.08.2024
PRONOUNCED ON : 21.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2708 of 2024
and C.M.P.No.14309 of 2024

Manikkam

... Petitioner

Vs.

Krishnamoorthi

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order dated 12.04.2023 passed by the learned Additional District Munsif, Attur, in I.A.No.8 of 2023 in O.S.No.84 of 2020.

For Petitioner : Mr.A.Sriram
For Respondent : M/s.Nalini Chidambaram
Senior Counsel
for Mr.R.Venkata Varathan

ORDER

The petitioner/defendant in O.S.No.84 of 2020 on the file of the Additional District Munsif Court, Attur filed I.A.No.8 of 2023 seeking condonation of delay of 90 days in filing the petition to set aside the exparte



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decree. The Trial Court dismissed the same by order dated 06.04.2024.

Against which, the present civil revision petition is filed.

2.The contention of the learned counsel for the petitioner is that a civil suit is filed by the respondent/plaintiff in O.S.No.84 of 2020 seeking declaration of title and restraining the petitioner/defendant in anyway interfering with the peaceful possession and enjoyment of the property. The suit was posted on 08.02.2023 for filing written statement and thereafter, it was adjourned to 12.04.2023, on which day exparte decree was passed. The reason given by the petitioner is that his Advocate advised the petitioner to collect documents and give particulars with regard to the contention raised by the respondent/plaintiff. The petitioner, in the meanwhile, suffered with Covid-19 and hence, he could not contact his Advocate to inform him about his health condition. After recovery, the petitioner approached his Advocate to file the written statement, at that time, his Advocate informed that since the petitioner not contacted, he reported 'no instructions' to the Court and took back his vakalat. In the meanwhile, taking advantage of the exparte order, the respondent/plaintiff obstructing the petitioner from carrying on his agriculture activities. Hence, the delay of 90 days in filing the set aside



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petition can be condoned and the suit can be decided on its own merits.

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3.The learned senior counsel appearing for the respondent/plaintiff submitted that the petitioner assaulted the respondent's mother and a private complaint filed before the learned Judicial Magistrate, Attur in S.T.C.No.749 of 2022, the petitioner and his son are appearing as accused. On 23.05.2022 both the petitioner and his son appeared in the criminal case before the learned Judicial Magistrate, Attur. He would submit that the petitioner giving reason that he suffered with Covid and hence could not file his written statement is false. In the written statement served to the respondent/plaintiff, the reason given for delay is that for the past six months the petitioner went to State of Kerala seeking employment and for that reason, he could not give proper instructions to his Advocate to file his written statement within time but in the condone delay petition, the petitioner/defendant gives reason that he suffered viral attack of Covid 19, thus false and contradictory reasons given to buttress the fact of falsity. The learned senior counsel produced the adjudication proceedings in S.T.C.No.749 of 2022. Referring to the adjudication, the learned senior counsel submitted that on 23.05.2022, the petitioner and his son present



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before the learned Judicial Magistrate in the criminal case, received copies and thereafter regularly appearing before the Criminal Court till 19.01.2024.

Hence, the Trial Court rightly rejected the contention of the petitioner and dismissed the petition. In support of his contention, the learned senior counsel relied upon the decisions of the Hon'ble Supreme Court in the case of ***Binod Bihari Singh vs. Union of India*** reported in (1993) 1 SCC 572 and ***Pundlik Jalam Patil (Dead) by LRs. vs. Executive Engineer, Jalgaon Medium Project and another*** reported in (2008) 17 SCC 448, for the principle that incorrect statement made in application seeking condonation delay itself is sufficient to reject the application without any further enquiry.

4.The learned counsel for the petitioner refuted the contention of the learned senior counsel for the respondent stating that the Civil Court and the Criminal Court are situated in the same compound. He would submit that as regards the criminal case, the petitioner appearing and as regards the civil case, the appearance of the parties is not compulsory and required. The Advocate engaged in civil case would take care of the case. During the relevant period, it was Covid-19 situation is not in dispute, several persons got affected by Corona virus and during that period, the affected persons



were advised to be in self quarantine. Further, the petitioner is not that educated and he goes by the advice of his Advocate. He further submitted that there might be some contradictions, for that reason the petitioner's right to defend the suit cannot be denied. It is only after full fledged trial, substantive justice can be rendered.

5.Considering the submissions made and on perusal of the materials, it is seen that the petitioner/defendant was set exparte on 08.02.2023 for non-filing of written statement. The suit is for declaration and permanent injunction which can be decided only after considering the evidence and documents. It is seen that on 07.04.2021, the Advocate of the petitioner filed his vakalat and for filing written statement, time was given till 23.12.2022. The previous Counsel informed the Court 'no instructions' and took back his vakalat unilaterally, failed to inform the petitioner and thereafter, on 12.04.2023, exparte decree granted. The petitioner appearing in the criminal case in the same compound cannot be a justification for denying the acceptance of delay of 90 days in filing the set aside petition. The citations referred by the respondent pertains to Land Acquisition case and Arbitration case. The facts of this case is in variance to the referred



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cases. In any event, the substantial justice would be rendered only after full-fledged trial. In view of the same, this Court is inclined to interfere with the order passed by the Trial Court. Accordingly, the order passed by the Trial Court in I.A.No.8 of 2023 in O.S.No.84 of 2020 dated 06.04.2024 is set aside.

6.In the result, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

cse

To

The Additional District Munsif,
Attur.



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M.NIRMAL KUMAR, J.

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Pre-delivery order made in

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