



CRP No.3204 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 25.10.2024

Order pronounced on : 30.10.2024

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.3204 of 2022
& C.M.P.No.17060 of 2022

K.S.Sankar

..Petitioner

Vs.

S.Gopal

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 14.07.2022 in I.A.No.357 of 2019 in O.S.No.504 of 2018 on the file of the Additional District Munsif Court, Cheyyar.

For Petitioner : Mr.P.Mani

For Respondent : Mr.K.G.Senthil Kumar

ORDER

This civil revision petition is filed as against the order dated 14.07.2022 in I.A.No.357 of 2019 in O.S.No.504 of 2018 on the file of the Additional District Munsif Court, Cheyyar.



2.The revision petitioner is the plaintiff in a suit for partition. The petitioner had filed O.S.No.504 of 2008 for partition and separate possession. The said suit came to be dismissed for non-prosecution on 20.09.2017. The petitioner therefore filed I.A No.357 of 2019 for condonation of delay of 620 days in filing the application to restore the suit.

3.The said application was resisted by the respondents/ second defendant by filing a detailed counter. The parties also led evidence in the said interlocutory application. The Trial Court however, found that the petitioner had not given satisfactory or sufficient reasons for condoning the inordinate delay of 620 days and proceeded to dismiss the said application.

4.I have heard Mr. P. Mani and Mr. K.G. Senthil Kumar, learned counsel for the petitioner and respondent respectively.

5.The learned counsel for the revision petitioner, Mr.P.Mani would submit that the parties are only brothers and the delay was properly explained by the revision petitioner. According to the learned counsel for the petitioner, the Trial Court has not accepted the valid explanation offered by the revision



petitioner and proceeded to dismiss the application for the condonation of delay.

He would further submit that as against an interlocutory order, an appeal had been filed and the suit was therefore kept in abeyance and the revision petitioner was under the impression that the appeal was pending and therefore, he did not prosecute the suit and that was the reason why the suit came to be dismissed for non-prosecution.

6.Per contra, the learned counsel for the respondent Mr. K.G. Senthil Kumar would submit that the revision petitioner has admitted in the evidence let in at the interlocutory stage that he used to meet his advocate and therefore, the reason assigned in the affidavit cannot be believed or be true. He would further place reliance on an order passed by this court in CRP No. 3697 of 2019 dated 25.08.2023, where between the same parties, there was a suit filed in O.S No. 76 of 2005 for recovery of money, where an ex- parte decree was passed and against the setting aside application, an order was passed in the above CRP when this court extended the time for payment of a sum of Rs.1 lakh within a specific time frame, failing which directed the said revision to be dismissed. Therefore, the learned counsel for the respondent would submit that there is no merit in the revision and prayed for dismissal of the CRP.

7.I have carefully considered the submissions advanced by the learned counsel on either side.



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8. Admittedly, the suit is one for partition and the revision petitioner and the respondent are siblings. The suit has been dismissed for non-prosecution and in order to restore the suit, the application was taken out along with the condonation of delay application. No doubt, the parties led the evidence and the Trial Court also found that the petitioner has not made out sufficient cause for condonation of delay. However, considering that it is a partition suit and substantial justice should be done and interest of the parties in immovable property being involved, an opportunity can be granted to the revision petitioner to prosecute the suit. However, at the same time, the respondent should be compensated by way of costs.

9. In view of the above, the Civil Revision Petition is allowed and I am inclined to entertain the revision in the manner following:

(i) Order in I.A.No. 357 of 2019 in O.S.No.504 of 2008 on the file of the Additional District Munsif Court, Cheyyar is hereby set aside subject to the revision petitioner paying a cost of Rs.10,000/- within a period of two weeks from the date of receipt of the copy of the order. The said payment shall be made before the Trial Court.



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(ii) In the event of such payment of cost being made in time as directed herein above, the trial court shall formally number the restoration application and also allow the same and direct the parties to face trial in the main suit. The trial court shall dispose of the suit on or before 30.04.2025, on merits and in accordance with law.

(iii) Connected Civil Miscellaneous Petition is closed.

30.10.2024

Speaking/Non-speaking order

Index : Yes/No

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To

The Additional District Munsif Court, Cheyyar.

P.B.BALAJI.J.

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