



C.R.P.(NPD).No.2816 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.2816 of 2021

Arulmigu Alamarathu,
Karuparayan Temple Kedarai,
Nambiyur Village,
Gobi Taluk, Represented by,
Managing Trustee and,
Dharmakartha K.S.Periyasamy

... Petitioner

VS

1.Shanmugam

2.Marappan

3.Kandasamy

4.Assistant Commissioner,
HR & CE, (Hindu Religious Charitable Endowment)
Erode.

5.Joint Commissioner,
HR & CE, (Hindu Religious Charitable Endowment)
Coimbatore.

... Respondents



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Prayer: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, praying to set-aside the fair and final order dated 30.03.2021 in I.A.No.1 of 2019 in O.S.No.208 of 2014 on the file of the District Munsif, Gobichettipalayam.

For Petitioner : Mr.K.Sudhakar

For R1 to R3 : Mr.SP.Yuvaraj

For R4 and R5 : Ms.Dr.S.Surya
Additional Government Pleader

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the petition filed by the petitioner to condone the delay of 442 days in filing the petition to restore the suit.

2. The petitioner herein filed a suit for bare injunction and the same was dismissed for default on 12.07.2018. Thereafter, the petitioner filed an application to restore the suit on 30.10.2019 along with a petition to condone the delay of 442 days in filing the restoration petition.

3. In the affidavit filed in support of the condone delay petition, it was



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stated by the petitioner that at the relevant point of time, he was affected by blood pressure, blockage of blood to brain and thereafter, jaundice. After recovery, when he contacted his counsel, he acquired knowledge about the dismissal of the suit for default and immediately steps have been taken to file petition to restore the suit.

4. The Trial Court dismissed the condone delay petition on the ground that the petitioner failed to substantiate illness pleaded by him by producing any documentary evidence.

5. The petitioner herein filed sworn affidavit stating that at the relevant point of time, he was affected with various illness as mentioned above. The petitioner is an octogenarian aged about 80 years. There is nothing on record to impute *malafides* on the part of petitioner to drag on his own suit. In such circumstances, this Court is inclined to take a liberal view of the matter and deems it appropriate to give an opportunity to the petitioner to fight the case on merits.

6. Further, in Paragraph No.11 of the impugned order, there are blanks



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with regard to date of dismissal of the suit for default and listing of the case for trial. In such circumstances, the impugned order passed by the Trial Court is liable to be set aside and accordingly, set aside.

7. Accordingly, the Civil Revision Petition stands allowed. The Trial Court is directed to take up the petition to restore the suit and dispose of the same in accordance with law. No costs.

01.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm



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To

WEB COPY

- 1.The District Munsif,
Gobichettipalayam.
- 2.Assistant Commissioner,
HR & CE, (Hindu Religious Charitable Endowment)
Erode.
- 3.Joint Commissioner,
HR & CE, (Hindu Religious Charitable Endowment)
Coimbatore.



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S.SOUNTHAR, J.

dm

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