



C.R.P.No.3055 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.07.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P.No.3055 of 2019

M.Kandasamy

... Petitioner

Versus

1.T.Kumaravadivel
2.P.N.Padmanabhan
3.P.N.Kumaresan

..Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the fair and final order passed in I.A.No.254 of 2018 in O.S.No. 2 of 2007 on the file of II Additional District Court, Erode dated 23.07.2019.

For Petitioner :Mr.A.Sundara Vadhanan

For Respondent 1 :Dismissed vide C/O dated 02.08.2023

For respondent 2 & 3 :Mr.V.S.Kesavan



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ORDER

The plaintiff in a suit for Specific Performance is the revision petitioner.

The suit was presented on 02.01.2007, to which, detailed written statement had been filed. After the presentation of the written statement by the defendants, the matter was listed for evidence on 11.12.2015. On that day, the case was listed for enquiry. After framing of the issues, before the matter could be taken up for trial, the petitioner's wife had passed away. Therefore, he could not be present in Court. Hence, he filed an application to set aside the order of dismissal for default and to restore the suit. There was a delay of 594 days in representing the petition filed. The reason for the delay is that he had lost his vision and underwent medical treatment.

2. This was stiffly opposed by the respondents. The learned trial Judge dismissed the application in I.A.No.254 of 2018, which was to condone the delay of 594 days in representation of the petition filed under Section 148 read with Section 151 of C.P.C. Consequently, the application filed under Order 9 Rule 9 of C.P.C stood rejected.



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3. Heard Mr.A.Sundara Vadhanan, learned counsel for the revision petitioner and Mr.V.S.Kesavan, learned counsel for the 2nd and 3rd respondents.

4. Mr.A.Sundara Vadhanan, learned counsel for the revision petitioner would contend that the reason for the delay is beyond the petitioner's control, since he had become blind and there was no one to support him and he had also lost his wife and that is the reason why he could not be present at the time of trial, which resulted in dismissal of the suit. He says that vital rights of the parties are involved and he had always been ready and willing to co-operate towards completion of the trial.

5. The said contention was resisted by Mr.V.S.Kesavan, learned counsel for the 2nd and 3rd respondents, by stating that the entire idea of the plaintiff is only to drag on the matter and keep the property under the cloud of litigation. He would say that he has an excellent case on merits. The plaintiff does not want to proceed with the case and he would justify the order passed by the



learned II Additional District Judge, Erode.

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6. Heard the arguments on either side. This is a petition to condone the delay in representation of 594 days. It is not in dispute that the petition to set aside has been filed in time. Unfortunately, due to reasons beyond the plaintiff/petitioner, the same could not be represented in time. The reason given by him is that his wife passed away and he does not have any one to support him and apart from that, he also lost his vision. In my view, these reasons constitute sufficient cause. It should have to be considered as such to condone the delay and to restore the suit.

7. However, considering the fact that Mr.V.S.Kesavan, learned counsel for the 2nd and 3rd respondents, says that his client has to be put on notice regarding restoration of the suit, I feel that the condonation and restoration could be done on terms.

8. Accordingly, the order passed in I.A.No.254 of 2018 in O.S.No.2 of 2007 on the file of the II Additional District Court, Erode is set aside on



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condition that the plaintiff/petitioner pays a sum of Rs.10,000/- (Rupees Ten Thousand only) to the learned counsel appearing for the 2nd and 3rd respondents. The said payment shall be made within a period of two weeks from the date of receipt of a copy of this order.

9. With the above directions, the Civil Revision Petition stands allowed.

No costs.

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Index:Yes/No.

Internet:Yes/No.

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To

The II Additional District Court, Erode



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BATTU DEVANAND.J.,

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