



C.R.P.No.4135 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.4135 of 2024
and C.M.P.No.22674 of 2024

Arumugam

... Petitioner

Vs

1. Prabhu

2. Subramanian

... Respondents

PRAYER : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, pleaded to set aside the order and decretal order dated 19.08.2024 passed in I.A.No.03 of 2024 in O.S.No.135 of 2021 on the file of learned Principal Sub Judge, Puducherry.

For Petitioner : Mr.Prakash Adiapadam

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Principal Sub Judge, Puducherry, on 19.08.2024 in IA.No.03 of 2024 in O.S.No.135 of 2021.



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2. The brief facts of the case is that the petitioner is the 1st defendant in the suit filed by the plaintiff/1st respondent in O.S.No.135 of 2021 before the learned Principal Sub Judge, Puducherry, seeking for a direction to the defendants to vacate and deliver possession of the plaint “B” schedule property to the plaintiff, to pay the cost of the suit and to grant other relief. In the said suit, the defendants were set ex parte and the ex parte judgment and decree was came to be passed on 07.04.2022. Thereafter, the petitioner herein/1st defendant has filed an application in I.A.No.2 of 2024 under Order IX Rule 13 CPC seeking to set aside the ex parte judgment and decree dated 07.04.2022, along with an application in I.A.No.3 of 2024 under Section 5 of the Limitation Act seeking to condone the delay of 671 days in filing the set aside petition. The learned Principal Sub Judge, Puducherry, has dismissed both the applications vide common order dated 19.08.2024. Aggrieved over the same, the present petition has been filed.

3. Learned counsel for the petitioner submitted that despite the petitioner/1st defendant showing sufficient cause, the trial Court, by an order dated 19.08.2024, has dismissed the application in I.A.No.2 of 2024 filed under Order IX Rule 13 of CPC seeking to set aside the *ex-parte* decree and judgment dated 07.04.2022 along



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with the application in I.A.No.3 of 2024 seeking to condone the delay of 671 days in filing the set aside petition. Thereby, the present revision petition has been filed seeking to set aside the order dated 19.08.2024.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. It is seen that the petitioner/1st defendant has filed a petition to condone the delay of 671 days in filing the set aside petition along with the petition under Order IX Rule 13 of CPC to set aside the ex parte decree 07.04.2022 and the same was dismissed by the trial Court vide common order dated 19.08.2024 stating that the petitioner has not adduced any sufficient reason either for condonation of delay or for setting aside the ex parte decree.

6. As per the decision rendered by the Hon'ble Apex Court in *Koushik Mutually Aided Cooperative Housing Society Vs. Ameena Begum and another* reported in 2023 SCC Online SC 1662 (SLP (C) No.5489 of 2021), when an application or petition under Order IX Rule 13 CPC is dismissed, the defendant



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can avail a remedy by preferring an appeal in terms of Order XLIII Rule 1(d) of CPC and thereby, the civil revision petition would not arise.

7. In view of the above, this Court is of the opinion that the present revision petition is not maintainable. Accordingly, this Civil Revision Petition stands dismissed. However, a liberty is granted to the revision petitioner to prefer an appeal before the appropriate forum. It is needless to say that the petitioner is entitled to exclude the time taken by him in *bonafidely* prosecuting the Civil Revision Petition before this Court by filing appropriate application under Section 14 of the Limitation Act, 1963. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes / No

Neutral Citation : Yes / No

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Note : Registry is directed to return the original papers to the petitioner's counsel forthwith and issue order copy on 15.10.2024.

To : The Principal Sub Court, Puducherry.



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A.D.JAGADISH CHANDIRA, J.

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