



CRP.No.3469 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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Samiyulla

... Petitioner

Vs.

- 1.Mujipunnisha (Died)
- 2.The Land Administrative Commissioner
Ezhilagam, Chennai 600 005.
- 3.The Director, Land Department
Ezhilagam, Chennai 600 005.
- 4.The District Collector, Villupuram
- 5.The District Revenue Officer, Villupuram
- 6.The Revenue Divisional Officer, Kallakurichi
- 7.Thasildar Kallakurichi
- 8.The Revenue Inspector, Kallakurichi



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9.The Village Administrative Officer,
Kallakurichi.

10.Dhilbarjan

11.Sherinbhanu

12.Ibrahim

...Respondents

Respondent -1 died, respondents 10 to 12
brought on record as Lrs of the deceased
R1 viz., Munjipunnisha vide Court order
dated 10.08.2023 made in CMP.No.3750/2022
in CRP.(NPD).No.3469 of 2019)

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetl order dated 07.06.2019 made in IA.No.269 of 2018 in OS.No.94 of 2015 on the file of the Principal District Munsif, Kallakurichi.

For Petitioner : Mr.N.Krishnakumar
for M/s.Sarvabhauman Associates

For Respondents : R1 – Died
Mr.V.Jeevagiridharan for R2 to R9
Additional Government Pleader



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ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the revision petitioner seeking to condone the delay of 622 days in filing a petition to restore the suit that was dismissed for default on 08.03.2016 as against the defendants 2 & 3 for non payment of process fee. In the affidavit filed in support of the petition seeking condonation of delay, it was stated by the petitioner that he filed a suit for mandatory injunction against the respondents and the same was dismissed against the defendants 2 & 3 for his failure to pay process fee. It was further stated by the petitioners that the said fact was not informed to him by his counsel immediately and hence the reason for delay is neither wilful nor wanton. It was further stated that he engaged new counsel and presented the application for restoration of the suit with an application for condonation of delay.

2. The Court below dismissed the application for condonation of the delay on the ground that the petitioner failed to produce any records to



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substantiate his claim that his counsel failed to inform the dismissal of the suit. The suit was dismissed against the defendants 2 & 3 on the ground of non payment of process fee by the petitioner. It is the case of the petitioner that dismissal of the suit for non payment of process fee was not informed by his erstwhile counsel and the present application has been filed by the new counsel.

3. It is settled law, if there is a dispute between the technicalities and substantial justice, the latter shall prevail over the former. In this case, in order to give an opportunity to the parties to contest the case on merits, taking into consideration the averment made by the petitioner in support of the condone delay petition, this Court is inclined to set aside the impugned order and allow the revision. Hence, IA.No.269 of 2018 filed to condone the delay in filing petition to restore the suit is allowed and the trial Court is directed to take up the petition to restore the suit and dispose of the same in accordance with law. The Civil Revision Petition is allowed on payment of cost of Rs.2,000/- to the credit of Taluk Legal Service, Kallakurichi within a period of two weeks from the date of receipt of copy of this order.



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4. With the above direction, this Civil Revision Petition is allowed. No costs.

01.02.2024

Index : Yes / No

Internet : Yes / No

dna

To

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- 3.The Director, Land Department
Ezhilagam, Chennai 600 005.
- 4.The District Collector, Villupuram
- 5.The District Revenue Officer, Villupuram
- 6.The Revenue Divisional Officer, Kallakurichi
- 7.Thasildar Kallakurichi
- 8.The Revenue Inspector, Kallakurichi
- 9.The Village Administrative Officer,

5/6



Kallakurichi.

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