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C.R.P.(NPD) No.4728 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.12.2024

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THE HON'BLE JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.4728 of 2024

V.Balasundaram

... Petitioner/Petitioner/Plaintiff

-VS-

1. M.Hemalatha

2. A.L.Mathialagan

... Respondents/Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the impugned order and decree dated 28.08.2024 passed in I.A.No.1 of 2023 in O.S.No.2339 of 2020 on the file of the VI Additional City Civil Court at Chennai.

For Petitioner : Mr.T.Saminathan

For Respondents : Mr.V.M.Venkataramana

ORDER

A challenge has been made to the impugned order dated 28.08.2024 passed in I.A.No.1 of 2023 in O.S.No.2339 of 2020 by the VI Additional City Civil Court, Chennai, by which the Interlocutory Application filed under Section 5 of Limitation Act to condone the delay of



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724 days in filing the application to restore the suit was dismissed.

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2. It is the case of the revision petitioner / plaintiff that he had filed a suit in O.S.No.2339 of 2020 for recovery of money to the tune of Rs.53,72,113/- on the basis of five Pro Notes executed by the respondents. Initially, the suit was filed before this Court in C.S.No.313 of 2013 and due to pecuniary jurisdiction enhancement, the suit was transferred to the file of VI Additional City Civil Court, Chennai and renumbered as O.S.No.2339 of 2020. It is further case of the revision petitioner that before transfer of the case, trial already commenced before this Court and the case was posted for additional evidence. After transfer of the suit, on account of the intervention of Covid lock down, the revision petitioner could not follow up the case. In the meanwhile, the suit was dismissed for default on 29.01.2021 during Covid lock down.

3. Thereafter, the revision petitioner had filed an application to condone the delay of 724 days to restore the suit and the same has been dismissed by the Trial Court, on the ground that reasons assigned in the



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affidavit are highly unbelievable. Aggrieved by the same, the revision petitioner is before this Court.

4. Heard both sides extensively and perused the material documents available on record.

5. The suit for recovery of money, which was at the first blush filed before this Court, was subsequently transferred to the VI Additional City Civil Court, Chennai owing to the enhancement of pecuniary jurisdiction. After transfer and renumbering of the case, summons have not been properly served on the parties. The Trial Court is mainly carried away by the fact that Counsel took notice on behalf of the revision petitioner and held that the applicant/revision petitioner was not prompt in prosecuting the matter. It is also not in dispute that the suit was dismissed for default during Covid pandemic and this aspect has not been taken into account by the Trial Court. Mere grant of certain adjournments before transfer of the suit to VI Additional City Civil Court, Chennai, cannot be a ground to refuse condonation of delay in restoring the suit, which was dismissed for default



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on 29.01.2021.

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6. Considering the fact that substantive right is involved in this case, as the revision petitioner had filed the suit for recovery of money, his rights cannot be shut on the basis of non-representation during Covid period. Hence, this Court is inclined to extend liberal approach in condoning the delay.

7. Accordingly, this Civil Revision Petition is allowed and the impugned order dated 28.08.2024 passed in I.A.No.1 of 2023 in O.S.No.2339 of 2020 by the VI Additional City Civil Court, Chennai is hereby quashed. The delay is condoned and the suit is restored. The Trial Court shall proceed with the suit on its own merits and dispose of the same within a period of four months from the date of receipt of a copy of this order.

8. At this juncture, learned counsel for the respondents, that too, after completion of the dictation of the order in this case by this Court, has made a hue and cry as if he has not been heard fully. Though this Court has



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heard the arguments advanced by the learned counsel for the respondents and passed orders on merits, still, he has been brow-beating the Court and caused inconvenience to the Court, reiterating the very same statement that he has not been heard, as he wants to take advantage of dismissal of the suit to non-suit the rights of the parties to recover the sum of Rs.53,72,113/-, which is highly deprecated. No costs.

09.12.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
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To:

VI Additional City Civil Judge,
Chennai



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N.SATHISH KUMAR,J.,
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