



C.R.P(MD)No.79 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.79 of 2024

and

CMP(MD)No.392 of 2024

F.Mohammed Thameen Ansari

... Petitioner / Plaintiff

Vs

Abdul Khadar @ Belt Kadhar

... Respondent / Defendant

Prayer : This Civil Revision Petition is filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 28.11.2023 passed in I.A.No.4 of 2023 in O.S.No.152 of 2015 on the file of the Ist Additional District Munsif Court, Tirunelveli.

For Petitioner : Mr.V.Meenakshisundaram

For Respondent : Mr.G.Thiruvarulselvan

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 28.11.2023 passed in I.A.No.4 of 2023 in O.S.No.152 of 2015 on the file of the Ist Additional District Munsif Court, Tirunelveli.



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2. The facts in brief is that the suit in O.S.No.152 of 2015 was filed by the revision petitioner herein against the respondent for the relief of permanent injunction in respect of the first item, declaration and permanent injunction in respect of the second item and for mandatory injunction for removing the drainage channel on the East of Schedule-I. The respondent herein remained ex parte before the trial Court. To set aside the ex parte decree there was a delay of 499 days and a petition in I.A.No.4 of 2023 was taken out by the respondent herein stating that the suit was posted for cross examination of the plaintiff on 16.09.2021. Since he was affected by Corona, isolated in his house, he was unable to meet his advocate and give instructions for cross examination. That was resisted by the revision petitioner herein stating that no proper reason is assigned and particulars of other respondents are also mentioned. The trial Court thought it fit to allow the petition on payment of Rs.5,000/-. Cost on or before a particular date. Against which, this Civil Revision Petition is preferred.



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3. The trial Court has recorded a finding that the period between 15.03.2020 and 28.02.2022 was a pandemic period and as per the judgment of the Hon'ble Supreme Court that must be deducted while calculating the limitation period. By taking into account the above said pandemic situation, the reasons assigned by the respondent herein was accepted and the trial Court thought it fit to allow the petition.

4. Learned counsel for the petitioner would submit that the trial Court should have exercised the discretion in a proper manner.

5. Unless the petitioner is able to convince the Court that the discretion is exercised improperly, the revision will not be allowed. No such ground is made out by the revision petitioner. Absolutely, I find no reason to interfere with the discretionary order passed by the trial Court in I.A.No.4 of 2023 in O.S.No.152 of 2015 on the file of the Ist Additional District Munsif Court, Tirunelveli.



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6. Accordingly, this Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition stands closed.

22.11.2024

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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To

1.The Ist Additional District Munsif Court, Tirunelveli.

2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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