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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.R.P(MD)Nos.2765 & 2766 of 2024

and

C.M.P(MD)No. 15657 of 2024

Gunalan

...Petitioner
in both CRPs.

Vs.

1. Periyasamy
2. Rajalakshmi
3. Saraswathi
4. Pandidevi
5. Ramani
6. Kannan

... Respondents
in both CRPs.

COMMON PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the Order dated 30.10.2023 made in unnumbered I.A.SR.Nos.1826 & 1827 of 2023 in I.A.No.1 of 2022 in A.S.No.41 of 2018 on the file of the Additional District Court (FTC), Paramakudi and number the same.



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For Petitioner : M/s.S.Siva Thilakar

COMMON ORDER

The issue involved in both Civil Revision Petitions filed in C.R.P. (MD)No.2765 of 2024 and C.R.P.(MD)No.2766 of 2024 are arising out of the order passed in I.A.No.1 of 2022 in A.S.No.41 of 2018 and hence the following common order is passed.

2.(i) The C.R.P.(MD)No.2765 of 2024 is filed against the return order passed in unnumbered I.A.SR.No.1826 of 2023 in I.A.No.1 of 2022 in A.S.No.41 of 2018, wherein the said IA SR is filed to condone the delay of 293 days delay in filing the restoration application to restore the I.A.No.1 of 2022.

2(ii) The C.R.P.(MD)No.2765 of 2024 is filed against the return order passed in unnumbered I.A.SR.No.1827 of 2023 in I.A.No.1 of 2022 in A.S.No.41 of 2018, wherein the said IA SR is filed to restore the I.A.No.1 of 2022.



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3. The Civil Revision Petitions are filed by the plaintiff in the suit and the appellant in the First Appeal, seeking direction to the Additional District Judge (FTC), Paramakudi, to number the unnumbered I.A.SR.Nos.1826 & 1827 of 2023 in I.A.No.1 of 2022 in A.S.No.41 of 2018. The Appellant in the appeal suit is the plaintiff in the suit and is the revision petitioner herein. The Respondents in the appeal are the defendants in the suit and are the respondents herein. For the sake of convenience, the parties shall be referred to as plaintiff and defendants as per the ranking in the suit.

4. The plaintiff had preferred the Appeal Suit in A.S.No.41 of 2018, but failed to appear before the Court on 11.11.2019, hence the appeal was dismissed on the same date for non-appearance and non-prosecution. Thereafter, the plaintiff had filed a restoration petition along with a petition for condoning the delay of 768 days and the said petition was allowed on cost of Rs.2,000/- payable on or before 08.12.2022. Since the cost was not paid, the said petition was dismissed.



5. Again, the plaintiff/appellant had preferred unnumbered I.A.SR. Nos.1826 & 1827 of 2023, wherein the Court had returned the papers stating that “the plaintiff had not paid the cost of Rs.2000/- imposed in the earlier application in I.A.No.1 of 2022 and thereafter the said petition was dismissed for not paying the cost, hence the present petition cannot be filed and therefore the present petition is returned”. And the said docket order is extracted hereunder:

“IA.1/22 in AS.41/18 மனுவில் cost not paid அதனால் மேற்படி மனுவை கோப்பிற்கு எடுக்க கோரி இம்மனு தாக்கல் செய்ய இயலாது. ஏனவே இம்மனு திருப்பப்படுகிறது.”

6. After hearing the submissions of the revision petitioner, this Court is of the considered opinion that the revision petitioner ought to have filed petition seeking extension of time to pay the cost imposed in I.A.No.1 of 2022, rather than filing petition to restore or condone delay.



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7. Considering the facts of the case, since the cost was not paid, this Court directs the Appellant/revision petitioner to pay the cost of Rs.2,000/- within a period of four weeks from the date of receipt of a copy of this order.

8. On such deposit, the Additional District Judge, Paramakudi, is directed to restore the appeal suit in A.S.No.41 of 2018 on file. Thereafter the Court is further directed to hear the appeal and pass Judgment on merits, within a period of six months thereafter.

9. Accordingly, these Civil Revision Petitions are allowed. No Costs. Consequently, connected miscellaneous petition is closed.

30.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The Additional District Judge, Paramakudi.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Common Order made in
C.R.P(MD)Nos.2765 & 2766 of 2024

30.10.2024