



CRP(MD).No.1782 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01.08.2024

CORAM

THE HON'BLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

**C.R.P(MD)No.1782 of 2024
and
C.M.P(MD).No.10261 of 2024**

Sirumalaipandi

... Petitioner

-Vs-

Thangathai

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside decree and fair order dated 05.09.2023 in I.A.No.1 of 2023 in A.S.No.4 of 2019 on the file of the Additional District Court, Virudhunagar.

For Petitioner : Mr.S.Shanmugam

For Respondent : Mr.B.Muneeswaran



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ORDER

The civil revision petition is directed against the order dated 05.09.2023 in I.A.No.1 of 2023 in A.S.No.4 of 2019.

2. By the said order, the interlocutory petition filed by the petitioner under Section 5 of the Limitation Act to condone the delay of 721 days in filing the petition to restore the appeal suit in A.S.No.4 of 2019 is dismissed. As against which, the present revision petition is filed.

3. The learned counsel for the petitioner would submit that the delay of 721 days is not huge. He would submit that there was also an intervening period of COVID-19. If that period is excluded, the delay is only minimal. Therefore, the trial Court ought to have seen that when the petition has been filed within reasonable time, one opportunity should have been given to the petitioner.



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4. Mr.B.Muneeswaran, learned counsel appearing on behalf of the respondent would submit that the decree is for recovery of money. The decree was passed on 16.08.2017 to recover a sum of Rs.2,13,000/-. Till date, the plaintiff has not seen the colour of the coin.

5. I have considered the rival submissions made on either side and perused the material records of the case.

6. Even though there is lapse on the part of the petitioner, considering the strenuous argument made by the learned counsel for the petitioner and considering the fact that the suit is for recovery of money, this Court deems it fit to grant one opportunity to the petitioner to conduct his appeal suit, but, however, on condition. Even in the normal course, when the appeal is filed in time in respect of money decree, interim order has to be granted only on condition. The said principle is also born in mind. In that view of the matter, the Civil Revision Petition is disposed of on the following terms:-

(i)The petitioner shall deposit a sum of Rs.60,000/- on or before 31.08.2024 to the credit of E.P.No.131 of 2022 on the file of hte



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Subordinate Court, Aruppukottai. If the said amount is deposited, the order of the trial Court dated 05.09.2023 shall stand set aside and the petition filed in I.A.No.1 of 2023 and also the consequent petition to restore A.S.No.4 of 2019 shall be deemed to have been allowed and the appeal will be restored to file. If the petitioner fails to obey with the said condition, the petition shall stand automatically dismissed without any further reference to this Court.

No costs. Consequently, connected Miscellaneous Petition is closed.

01.08.2024

Index : Yes / No
Internet : Yes/ No
Rmk

To
1.The Additional District Court, Virudhunagar.
2.The Subordinate Judge, Aruppukottai.



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D.BHARATHA CHAKRAVARTHY, J.

Rmk

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