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C.R.P.(MD)No.1181 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD).No.1181 of 2022 and
C.M.P.(MD)No.4844 of 2022

Tasmohaideen

... Petitioner / 1st Respondent /
1st Respondent

Vs.

1. Sonai

... 1st Respondent/ Petitioner /
Appellant

2. Karuppayee

... 2nd Respondent / 2nd Respondent /
2nd Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 01.12.2021 made in I.A.No.1 of 2019 in A.S.No.(unnumbered) of 2016 on the file of the Subordinate Court, Manamadurai and allow the civil revision petition.

For Petitioner : Mr.D.Senthil



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ORDER

The plaintiff in O.S.No.24 of 2012 on the file of the Additional District Munsif Court, Manamadurai is the revision petitioner herein.

2. The suit was for permanent injunction. The suit was decreed on 30.06.2014. Questioning the same, the defendants filed first appeal before the Sub Court, Manamadurai. There was delay of 563 days in filing the appeal. To condone the same, I.A.No.1 of 2019 was filed and it was allowed on 01.12.2021. Questioning the same, this civil revision petition came to be filed.

3. The learned counsel appearing for the revision petitioner reiterated all the contentions set out in the memorandum of grounds of civil revision. He relied catena of case laws and they are as follows:-

“i) 2009 (5) CTC 48 (Shanmugam V. Chokkalingam)

ii) 2003-1-L.W.585 (Sundar Gnanaolivu V. Rajendran Gnanavolivu)



iii) 2016 (2) MWN (Civil) 503 (Ilangovan V.

Ramasamy)

iv) 2018 (6) CTC 331 (Jebasundari V. S.Tharmar)

v) C.R.P.(MD)No.2252 of 2011 dated 23.09.2019

(Marimuthu Moopanar V. Mohaideen Pitchaikani)

vi) (2008) 17 SCC 448 (Pundlik Jalam Patil V.

Jalgaon Medium Project)''

The above precedents have been cited in support of his contention that if sufficient case is not made out, delay should not be condoned. He specifically insisted that the defendants were fully aware of passing of the decree and that only to drag on the proceedings, the appeal has been filed. The appeal has been filed with an inordinate delay. He called upon this Court to set aside the impugned order.

4. The respondents have been served and their names have been printed in the cause list. However, they have not chosen to enter appearance.



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5. No doubt, the delay is fairly wrong. But the first appellate Court has chosen to condone the same.

6. The defendants have given some reasons including ill-health as to explain the delay. When the discretion of the first appellate Court has been exercised in favour of the defendants / appellants, I am not inclined to interfere with the same in exercise of jurisdiction under Article 227 of the Constitution of India. This civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.09.2024

Index : yes/No
Internet: Yes/No
PMU

To

The Subordinate Judge,
Manamadurai.



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5

C.R.P.(MD)No.1181 of 2022

G.R.SWAMINATHAN,J.

PMU

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11.09.2024