



C.R.P(MD)No.1678 of 2022

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.1678 of 2022

1.Devasahaya Mani

2.Palraj

... Petitioners / Plaintiffs

Vs

1.George

2.Thomas

... Respondents / Defendants

Prayer : This Civil Revision Petition is filed under Section 115 of Civil Procedure Code to set aside the fair and decreetal order dated 25.10.2019 passed in I.A.No.1 of 2019 in O.S.No.234 of 2014 on the file of the Additional District Munsif Court, Valliyoor.

For Petitioner : Mr.V.Meenakshisundaram

For Respondent : Mr.S.R.Anbarasu



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ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 25.10.2019 passed in I.A.No.1 of 2019 in O.S.No. 234 of 2014 on the file of the Additional District Munsif Court, Valliyoor.

2. The facts in brief is that the suit in O.S.No.234 of 2014 was filed by the revision petitioner seeking the relief of permanent injunction and for cost. The defendants entered appearance and filed their written statement. Later the revision petitioners failed to appear before the trial Court and so it was dismissed for default on 04.06.2018. To set aside the order, there is a delay of 372 days. To condone the delay, a petition I.A.No.1 of 2019, under Section 5 of the Limitation Act was filed with the following averments :

i) The earlier counsel Mr.Joseph Raj Jegan did not appear before the Court when the matter was called. So it was dismissed for default on 04.06.2018. On 03.11.2018, the revision petitioner approached the advocate and only at that time, it was brought to his notice that the suit



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was dismissed for default on 04.06.2018. So there is a delay of 372 days in preferring the petition. That was resisted by the respondent herein stating that no proper reason was assigned by the revision petitioner. No immediate step was taken to restore the suit. After hearing both sides, the trial court dismissed the petition by making an observation that between 27.06.2016 and 04.06.2018, for about 2 years, the matter was periodically adjourned. It was listed for final trial in the list on 04.06.2018. The matter was passed over till 03.16 p.m. Even at that time, there was no representation by the plaintiffs. By observing the record of proceedings, it went on to held that no proper reason is assigned by the plaintiffs and making complaint against the advocate is not permissible. Against which this revision petition is preferred.

3. Learned counsel for the petitioner would submit that the earlier counsel appearing for the revision petitioner did not inform him about the date of hearing and that was the main reason for the dismissal. He came to know about the same only after making enquiry. He changed the counsel. Thereafter, filed the petition. According to him, the reason assigned by him is a genuine one. Therefore, an opportunity may be



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given to him to prosecute the matter to its logical conclusion. Since he is the plaintiff there is no necessity for him to drag on the proceedings.

4. Per contra, learned counsel for the respondent by relying upon a judgment of this Court reported in **2023 (1) CTC 444** in the case of ***M.Duraisamy Vs Vasantha and another***, would submit that reason must be assigned properly and imposing cost by taking lenient view, is not proper under law.

5. No doubt that the parties must be vigilant in prosecuting the matter diligently and allowing the matter to be disposed of otherwise on merits, either default or ex parte by the parties should not be encouraged. But at the same time, it is seen that because of the mistake committed by the Advocates, the parties should not suffer. I find no reason to doubt the genuineness of the reasons cited by the revision petitioner. As mentioned by him, there is no point for him to drag on the proceedings, since the suit is one filed for removing the drainage channel and etc. If the suit is not prosecuted to its logical conclusion, then the affected party will be the revision petitioner himself. On the sole ground,



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this revision petition is liable to be allowed, ofcourse, by imposing cost to compensate the respondents for the inconvenience caused to them.

6. Therefore, the petitioners are directed to pay a sum of Rs.5,000/- (Rupees Five Thousand only) as cost to the respondents for the inconvenience caused to him, on or before 11.12.2024.

7. With the above direction, this Civil Revision Petition will be allowed.

8. Call on 11.12.2024.

22.11.2024

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

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To

- 1.The Additional District Munsif Court, Valliyoor.
- 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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