



C.R.P.(MD)No.790 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.790 of 2023

Sandhivinayagam

... Petitioner

Vs.

1.Murugan

2.Mahalingam

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., against the order, dated 03.02.2023, passed in I.A.No.1 of 2022 in A.S.No.87 of 2017 on the file of the Sub Court, Valliyoor, in O.S.No.92 of 2011 on the file of the District Munsif Court, Valliyoor.

For Petitioner : Mr.B.Brijesh Kishore
For Respondents : Mr.A.D.Ganeshmoorthi

ORDER

The defendant in the suit is the Civil Revision Petitioner herein and the plaintiffs in the suit is the respondents herein.



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2. The plaintiff / respondent herein had filed the suit for declaration and injunction and the same was dismissed. Aggrieved over the same, the plaintiffs had preferred an appeal in AS.No.87 of 2017 and the notice was sent to the defendant and the same was received by the defendant. However, the defendant did not appear before the Court and the appeal was heard on merits and the appeal was allowed in favour of the plaintiff.

3. Thereafter the defendant had preferred I.A.No.1 of 2022 under section 5 of Limitation Act to condone the delay of 60 days and to rehear the appeal after giving opportunity to the defendant. The said application was dismissed, aggrieved over the same the present Civil Revision Petition is filed.

4. The contention of the defendant / revision petitioner is that the suit was filed by the plaintiff and the defendant was set exparte. In spite of engaging an Advocate, the defendant could not appear before the Court to contest the suit. After hearing the plaintiff the suit was dismissed. Aggrieved over the same the plaintiff had preferred an appeal. In the appeal the defendant was issued notice, but again the defendant failed to appear and was set exparte. The appeal was



heard on merits and the appeal was allowed. It is pertinent to note that the defendant had not filed written statement and the appeal was allowed, thereby the suit was allowed in favour of the plaintiff. Hence the defendant had preferred to rehear the appeal along with condonation of delay of 60 days and the delay petition was dismissed. Even if the delay petition is allowed then the defendant ought to be allowed to file written statement, then only the case can be adjudicated.

5. Since the delay is only 60 days the same ought to be considered. But it is seen that the defendant failed to file written statement. Now the entire case ought to be re-adjudicated after filing the written statement. If so the plaintiff would be prejudiced. Therefore the Civil Petition is allowed on cost of Rs.2000/- payable to the plaintiff. The parties are permitted to amend the pleadings, file additional evidences and contest the case. The defendant is permitted to file written statement along with documents. After giving opportunity to the plaintiff as well as defendant, the case shall be heard on merits. Both the plaintiff and the defendant shall cooperate in disposing the appeal. The appeal shall be disposed of within a period of six months from the date of receipt of a copy of this judgment.



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6. With the above said observations, the civil revision petition is allowed.

18.09.2024

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

Tmg

To

1. Sub Court, Valliyoor.
2. District Munsif Court, Valliyoor.
3. The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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