



C.R.P.(MD)No.919 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14/03/2024

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The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No. 919 of 2022

and

CMP (MD) No. 3671 of 2022

T.Sagayaraj : Revision Petitioner/
Respondent/Plaintiff

Vs.

A.Rathinagiri : Respondent/Petitioner/
Defendant

PRAYER:-Civil Revision Petition has been filed under section 115 of the Civil Procedure Code, to set aside the fair order and decreetal order, dated 29/11/2021 rendered in IA No.01 of 2019 in OS No.849 of 2016 on the file of the Second Additional Subordinate Judge, Tiruchirappalli.

For Petitioner : Mr.K.S.Kathiravan

For Respondent : Mr.M.Lakshmi Mahendra

O R D E R

This civil revision petition is filed seeking to set aside the fair order and decreetal order, dated 29/11/2021 rendered in IA No.01 of 2019 in OS No.849 of 2016 by the II Additional Sub Judge, Trichy.



2. The facts in brief:-

A suit in OS No.849 of 2016 was filed by the petitioner herein as plaintiff seeking the relief of recovery of Rs.2,50,000/- along with interest and for costs. The defendant was set *ex-parte*, because of his non appearance and an *ex-parte* decree was passed. To set aside the *ex-parte* decree, he filed IA No.1 of 2019 under section 5 of the Limitation Act to condone the delay of 600 days. That was allowed by the trial court on payment of costs.

3. Against which, this civil revision petition has been filed.

4. In the affidavit, it has been stated by the defendant/respondent that he was served with the summon in that case directing to appear, on 21/10/2016. But unfortunately, he misplaced the summon. In spite of his best efforts, he could not find out the same. The above said *ex-parte* decree was brought to his knowledge, when he was served with notice in EP No.16 of 2018. Later, he engaged an Advocate in the EP proceedings. One Advocate informed him that he was already set *ex-parte*, on 09/01/2017.



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5.That was resisted by the petitioner/plaintiff stating that no proper reason is mentioned by the defendant in the affidavit.

6.Heard both sides.

7.Perusal of the records called for from the trial court indicates that the petitioner/defendant received the summon from the trial court and entered appearance through his Advocate. It was submitted before the trial court that, on 18/03/2019, at the time of argument, the learned counsel appearing for the petitioner has submitted that he did not receive the summon from the trial court. But the above said perusal of the records shows the contra facts.

8.Now coming to the affidavit filed by the petitioner shows that he filed application to condone the delay of 660 days. He has simply stated that the summon that was received by him was misplaced. In spite of his best efforts, he could not able to trace the record. So, he could not able to appear before the trial court. But as stated above, the trial court records shows otherwise. So, it is clear on record that the petitioner has not approached the trial court with clean hands with full and true particulars.



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9. Apart from that, it is also stated that in the EP proceedings, notice was received by him, it was entrusted to the Advocate to appear on his behalf. At that time only, that *ex-parte* decree came to his knowledge. So, this explanation on the part of the petitioner is sufficient enough to reject his request. But however, the trial court was of the view that since the main suit is one for recovery of money, opportunity must be given to the petitioner to decide the matter. On that account, the trial court thought it fit to allow the application on payment of costs. But as stated above, the respondent/defendant has not approached the trial court with clean hands. Such a stand or conduct should not be encouraged and permitted. On the sole ground, the order passed by the trial court is liable to be set aside.

10. In the result, this civil revision petition is **allowed**. The order and decretal order, dated 29/11/2021 passed in IA No.01 of 2019 in OS No.849 of 2016 on the file of the II Additional Sub Judge, Trichy is set aside. No costs. Consequently connected Miscellaneous Petition is closed.

14/03/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The II Additional Sub Judge,
Trichy.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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