



C.R.P(MD)No.1203 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 26.11.2024
DELIVERED ON : 11.12.2024

CORAM:

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.1203 of 2022
and
C.M.P(MD)No.4947 of 2022

R.Cruze Mohan Rajaiah

... Petitioner

Vs.

M.P.Raja

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 18.03.2022 passed in I.A.No.252 of 2020 in O.S.No.9 of 2017 on the file of the Principal Sub Court, Kumbakonam.

For Petitioner : Mr.A.Jagadeesan

For Respondent : Mr.T.R.Subramanian



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ORDER

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This Civil Revision Petition is preferred against the order, dated 18.03.2022 passed in I.A.No.252 of 2020 in O.S.No.9 of 2017 on the file of the Principal Sub Court, Kumbakonam.

2. The revision petitioner is the defendant in the above suit. The respondent as plaintiff filed the suit in O.S.No.9 of 2017 for recovery of money based on a promissory note, dated 14.12.2014.

3. According to the revision petitioner, the said suit was filed on 09.12.2016 before the Sub Court, Kumbakonam and was numbered as O.S.No.9 of 2017. However, the said suit was dismissed for non-payment of batta on 11.04.2017. Thereafter, an application to restore the suit was filed with a delay of 906 days along with condonation of delay petition in I.A.No. 252 of 2020. Though the revision petitioner resisted the said application by filing counter affidavit, the Courts below allowed the said application without sufficient reason. In the support affidavit of the said application, no sufficient cause for condoning the delay was attributed. Hence, the revision petitioner was constrained to file the present revision for setting aside the

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order passed by the Trial Court in I.A.No.252 of 2020.

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4. The learned Counsel appearing for the revision petitioner would submit that the Trial Court erred in allowing the said application when no sufficient cause was shown by the respondent / plaintiff for condoning the delay. His further submission is that unless sufficient cause is shown for non appearance on the date of which the suit is fixed for hearing, there will be no justification for the Trial Court to set aside the dismissal order.

5. On the other hand, the learned Counsel appearing for the respondent / plaintiff would submit that since the plaintiff was suffering from Diabetics, he was unable to pursue with the suit. Hence, the non-appearance of the plaintiff is neither willful nor wanton.

6. The learned Counsel for the respondent further submits that the Trial Court after considering the reason stated in the support affidavit, allowed the said application by giving a liberal approach which calls for no interference. On perusal of the impugned order, the Trial Court has made an observation that on 25.01.2017, the Court summon was affixed on the door



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of the respondent and since the same was not brought to the knowledge of the Court by the Bench Clerk, the suit was dismissed for default for non-payment of batta erroneously. Therefore, the Trial Court allowed the application on payment of cost of Rs.1000/-. Now it has to be considered whether this reason can be accepted for condoning the delay of 906 days in restoring the suit by the Trial Court. On perusal of the support affidavit, it is only mentioned that since the respondent / plaintiff was suffering from Diabetics, he was unable to proceed with the suit. For which, no medical evidence produced on the side of the respondent / plaintiff. The affidavit does not set out the details of the treatment taken by the respondent / plaintiff. The only claim made in the affidavit is that the plaintiff was suffering from Diabetics. The Courts below completely ignored the provisions of Order IX, Rule 9 of the Civil Procedure Code, 1908 and proceeded to dispose of the application before it on wrong notions of principles of justice. The Courts below was obviously carried away by sympathy. It had over looked the provisions under Order IX, Rule 9 of CPC. Under the rule, the Court should be satisfied that there was sufficient cause for non-appearance of the plaintiff when the suit was called for hearing. In this case, the question of satisfaction of the Court as to what was sufficient



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cause does not arise as no good cause was mentioned by the respondent / plaintiff for his non-appearance.

7. In this circumstances, the Courts below is in error in condoning the delay without considering whether there was sufficient cause for the non-appearance of the respondent / plaintiff. Unless sufficient cause is shown for non-appearance on the date on which the suit is fixed for hearing, there will be no justification for condoning the delay of 906 days in seeking to set aside the order of dismissal for default.

8. In the result, the order of the Trial Court is wholly un-sustainable and it is hereby set aside. Accordingly, the Civil Revision Petition stands allowed and the order, dated 18.03.2022 passed in I.A.No.252 of 2020 in O.S.No.9 of 2017 is set aside. However, there is no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

11.12.2024

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

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To

The Principal Sub Court,
Kumbakonam.



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K.GOVINDARAJAN THILAKAVADI, J.

BTR

Order made in
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