



C.R.P.(MD).No.1092 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD)No.1092 of 2019

Impthias
S/o. Mohideen Kunju
Proprietor of Rukiya Cashew Company,
Kilikkolloor P.O,
Kollam,
Kerala State.

... Petitioner/Petitioner/
Plaintiff

-VS-

1. M/s.Fareediya Cashew Company,
Having its registered office at,
Karicode, Kollam,
Kerala State,
Represented by its Managing Partner,
the second respondent.

2. Rasheed
3. Shajakhan
4. Nazar

... Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 20.09.2018 in E.A.No.258 of 2014 in O.S.No.127 of 1999 on the file of the learned Subordinate Judge, Kuzhithurai.



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For Petitioner : Mr.K.N.Thambi

For Respondents :Mr.M.P.Senthil

ORDER

The present Civil Revision Petition has been filed by the decree holder in a suit for recovery of money challenging the order, wherein the application filed by the decree holder for condoning the delay of 1368 days in representing the Execution Petition has been dismissed.

2. The Revision Petitioner herein had obtained a decree in O.S.No.127 of 1999 on 31.10.2000 for recovery of a sum of Rs.80,965/- towards the principal amount and a sum of Rs.12,747/- towards interest at the rate of 18% per annum from the date of filing of the suit. The decree holder had filed Execution Petition on 15.09.2009. Thereafter, the Execution Petition was returned on 05.04.2010 and it was represented. For the second time, the execution petition was returned on 07.06.2010. thereafter, the execution petition was represented on 05.04.2014 along with E.A.No.258 of 2014 to condone the delay of 1368 days in representing the execution petition.



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3. A perusal of the affidavit in E.A.No.258 of 2014 reveals that the decree holder is permanently residing at Thiruvananthapuram, Kerala State and he has solely relied upon the Advocates' clerk who was handling the case bundle. He further stated that the said Advocate Clerk had undergone treatment and surgery for cancer in a private hospital at Thiruvananthapuram. Hence, he could not attend the Advocate Office regularly. The decree holder was under the impression that the Execution Petition was numbered and the same was pending. However, he later came to know that the returned Execution Petition has got misplaced with other case bundles and it was traced out and later represented on 05.04.2014.

4. The learned counsel appearing for the petitioner further contended that considering the fact that the petitioner was permanently residing at Thiruvananthapuram and he was not in a position to regularly check his counsel at Kuzhithurai, the delay may be condoned.

5. Per contra, the learned counsel appearing for the respondents/judgment debtors had contended that as a decree holder, the petitioner ought to have regularly followed of the matter with his counsel.



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The execution petition has been returned for rectification of certain defects.

The Advocate is solely responsible for rectification of the said defects and for representing the same before the Court in time. Therefore, the reasons assigned by the decree holder for the delay of 1368 days is not acceptable.

6. The Execution Court after considering the submissions made on either side had disbelieved the reasons assigned for the delay and considering the length of delay the said application has been dismissed. Challenging the same, the present Revision Petition has been filed.

7. The decree was passed in October 2000. The first execution petition has been filed on 15.09.2009. Though the execution petition was returned twice, it was represented only on 05.04.2014. Considering the reasons assigned in the affidavit that the Advocate clerk was handling the case bundle, he was affected with cancer and he has undergone treatment and surgery at Thiruvananthapuram Hospital, this Court is inclined to condone the delay with a condition that the plaintiff would not be entitled to receive any interest for the period between 15.09.2009 and 05.04.2014.



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8. In view of the above said facts, the order passed by the Sub Court, Kuzhithurai (Execution Court) in E.A.No.258 of 2014 in O.S.No.127 of 1999 dated 20.09.2018 is hereby set aside and E.A.No.258 of 2014 is allowed. The Execution Court is directed to number the Execution Petition and pass orders on merits and in accordance with law within a period of four months from the date of receipt of a copy of this order. It is made clear that the decree holder, in case, if the execution petition is allowed, is not entitled to receive any interest for the period from 15.09.2009 to 05.04.2014.

9. Accordingly, this Civil Revision Petition is allowed. There shall be no order as to costs.

01.04.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Sub Court,
Kuzhithurai.



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