



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.P(MD)No.5414 of 2024
in C.R.P(MD)SR.No.420 of 2024

Patchaimuthu

... Petitioner

Vs.

N.Lakshmanan

... Respondent

PRAYER in C.M.P(MD)No.5414 of 2024: Civil Miscellaneous Petition is filed under section 5 of Limitation Act, to condone the delay of 79 days occurred in filing the main Civil Revision Petition.

PRAYER in C.R.P(MD)SR.No.420 of 2024: Civil Revision Petition is filed under 115 of the Civil Procedure Code, against the fair and decreetal order passed in I.A.No.1 of 2023 in O.S.No.34 of 2016 on the file of the Subordinate Court, Devakottai, dated 21.09.2023.

For Petitioner : M/s.M.Sudha Rani

For Respondent : Mr.R.Sundar Srinivasan

ORDER

This Civil Miscellaneous Petition is filed to condone the delay of 79 days in filing the main Civil Revision Petition.

2. The defendant is the Petitioner and the plaintiff is the Respondent herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendant.



3. The suit in O.S.No.34 of 2016 was filed by the plaintiff for declaration and injunction. The defendant has remained exparte. After 1838 days delay, the defendant has preferred an interlocutory application in I.A.No.1 of 2023 to set aside the exparte decree, dated 27.06.2017. After hearing the case, on merits the Sub Court, Devakottai, had dismissed the said application on 21.09.2023. Aggrieved over the same, the present Civil Revision Petition is filed along with condone delay of 79 days.

4. The Civil Revision Petition is not maintainable since it is an appealable order. For which, the Learned Counsel appearing for respondents relied on the Judgment rendered by the Hon'ble Supreme Court in the case of the Koushik Mutually Aided Cooperative Housing Society Vs. Ameena Begum and another reported in 2023 INSC 1065, wherein in paragraph Nos.15 & 16 the Hon'ble Supreme Court held that any order passed under Order 9 Rule of 13 of Civil Procedure Code, rejecting the application for seeking setting aside the decree is an appealable order. Therefore, the defendant ought to prefer an appeal before the District Court, Sivagangai District. Therefore, the present Civil Revision Petition is dismissed with liberty to file appeal before the District Court within a period of eight weeks from the date of receipt of the copy of the order.



5. It is seen the I.A.No.1 of 2023 to set aside the exparte decree was dismissed on 21.09.2023. Therefore, the period from 21.09.2023 until filing of the Civil Miscellaneous Appeal before the District Court (if filed within eight weeks from the date of receipt of the copy of the order), the period shall not be taken for calculating the limitation period.

6. With these above observations, this Civil Miscellaneous Petition stands dismissed and the Civil Revision Petition is also dismissed at the SR stage itself. However, Liberty is granted to the petitioner to file Civil Miscellaneous Appeal before the appropriate Court as stated supra. No Costs.

27.08.2024

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

To

1. The Sub Court, Devakottai.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Order made in
C.M.P(MD)No.5414 of 2024
in
C.R.P(MD)SR.No.420 of 2024

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