



C.R.P.(MD)No.918 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.02.2024

Pronounced on : 11.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.918 of 2019

Karuppanan

... Petitioner/
Petitioner/
Appellant/
Plaintiff

Vs.

Perumal Naicker

... Respondent/
Respondent/
Respondent/
Defendant

Prayer : This Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to call for the records of the order dated 03.01.2019 in I.A.No.7 of 2018 in A.S.No.Un-numbered of 2018, on the file of Subordinate Judge, Aruppukkottai against O.S.No.328 of 2010, on the file of Additional District Munsif Court, Aruppukkottai and set aside the same by allowing this Civil Revision Petition.

For Petitioner : Mr.S.Balamurugan

For Respondent : No appearance



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ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.7 of 2018 in Unnumbered A.S.____ of 2018 dated 31.01.2019 on the file of the Subordinate Court, Aruppukottai, dismissing the application filed under Order 41 Rule 3(A) of the Code of Civil Procedure.

2. The revision petitioner as plaintiff has filed a suit in O.S.No.328 of 2010 against the respondent claiming declaration that the suit property is belonging to the revision petitioner and for consequential permanent injunction restraining the respondent and his men from putting up any construction or from any manner interfering with the revision petitioner's peaceful possession and enjoyment of the suit property. The respondent has filed the written statement and was contesting the suit. The revision petitioner has amended the plaint and thereby included the relief of mandatory injunction directing the respondent to remove the asbestos sheet, brick, wall and other constructions made in the suit property. It is evident from the records that since the respondent has not taken part in the trial, he was called absent and set *ex parte*. During trial, the revision petitioner has examined himself as P.W.1 and his sisters as P.W.2 and



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P.W.3 respectively and exhibited 7 documents as Ex.A.1 to Ex.A.7 and also the commissioner's report and plan as Ex.C.1 to Ex.C.3. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the revision petitioner's side arguments, has passed a judgment and decree dated 24.08.2017 dismissing the suit. Aggrieved by the dismissal of the suit, the revision petitioner has filed an appeal along with an application under Order 41 Rule 3(A) C.P.C. to condone the delay of 38 days in filing the appeal and the said application was taken on file in I.A. No.7 of 2018 on the file of the Subordinate Court, Aruppukottai. The respondent had remained *ex parte*. The learned appellate Judge, considering the records available on record and on hearing the arguments of the revision petitioner's side, has passed the impugned order dated 31.01.2019 dismissing the said application. Aggrieved by the order of dismissal, the appellant/plaintiff has preferred the present revision.

3. The learned appellate Judge, by referring to a portion of the revision petitioner's affidavit and by holding that the reasons canvassed are not satisfactory, dismissed the application.



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4. The revision petitioner, in the affidavit filed in support of the delay condonation petition, has stated that after receiving the copies of the the judgment and decree, he met his counsel and the counsel advised that additional documents are required to prove the revision petitioner's case and that the revision petitioner has taken serious efforts to trace out the documents, but he could not find the same and in that process, there occurred a delay of 38 days.

5. As already pointed out, it is pertinent to note that the respondent, after filing the written statement, has not chosen to contest the suit. No doubt, just because a defendant remained *ex parte*, the plaintiff cannot be granted a decree automatically. The trial Court, after considering the evidence adduced by the revision petitioner, not satisfied with the same, dismissed the suit. Even in the application filed under Order 41 Rule 3(A) C.P.C. to condone the delay in filing the appeal, despite receipt of Court notice, the respondent has not chosen to enter into appearance and hence, he was again called absent and set *ex parte*.

6. It is settled law that the word "sufficient cause" in Section 5 of Limitation Act should receive liberal construction to do substantial justice.



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It is also settled law that the length of delay is no matter, but acceptability of the explanation is the only criterion.

7. Considering the facts and circumstances of the case and also the reason canvassed by the revision petitioner and the quantum of delay, this Court is of the clear view that the revision petitioner should be given an opportunity to prosecute the appeal and the delay occurred in the appeal is to be condoned. The learned appellate Judge has adopted a hyper technical approach and without considering the relevant aspects required to be considered for condoning the delay under Order 41 Rule 3(A) C.P.C. has dismissed the application and as such, the same is liable to be set aside.

8. In the result, this Civil Revision Petition will be allowed on payment of cost of Rs.5,000/- (Rupees Five Thousand only) by the revision petitioner to the account of the Environmental Committee Operated by Registrar (Judicial) [Account No.7633863037; MICR Code: 625019020, CIF No: 30602376727, IFSC Code: IDIB000H040, High Court Branch, Madurai (2001)], on or before 25.03.2024, failing which, the revision shall stand dismissed automatically.



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9. Post the matter on 26.03.2024 for reporting compliance.

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11.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

Note : Issue order copy on 20.03.2024

To

1. The Subordinate Court,
Aruppukottai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

**Pre-Delivery Order made in
C.R.P.(MD)No.918 of 2019**

Dated : 11.03.2024