



C.R.P.(MD).No.295 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT.

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Dated : 25.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRP(MD).No.295 of 2014

and

M.P.(MD).No.1 of 2014

and

C.M.P.(MD).No.2982 of 2024

K.Mohamed Ibrahim

... Petitioner

Vs.

1.A.Ganapathi (Died)

2.M.Arunachalam

3.Sharavanan Ganapathy

4.Arunachalam Ganapathy

5.Shivakumar Ganapathy

6.Geethasri Ganapathy

... Respondents

(respondent Nos 3 to 6 are brought on record as Lrs of the deceased first respondent vide Court order dated 05.09.2023 made in C.M.P.(MD).Nos.6160 to 6162 of 2023 in C.R.P.(MD).No.295 of 2014)

PRAYER: Civil Revision Petition has been filed under Section 115 of C.P.C., to allow the revision and set aside the order dated 30.08.2013 made in I.A.No.139 of 2013 in O.S.No.69 of 2009 on the file of the District Munsif Cum Judicial Magistrate, Senkottai.



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For Petitioner : Mr.P.T.S.Narendra Vasan

For Respondents : Mr.T.Selvakumar for R2, R3, R5 and R6
: R1- Died
: R4- No appearance

ORDER

This Civil Revision Case has been filed by the petitioner as against the order made in I.A.No.139 of 2013 in O.S.No.69 of 2009 by the learned District Munsif-Cum-Judicial Magistrate, Senkottai, dated 30.08.2013.

2. The second defendant in the suit in O.S.No.69 of 2009 on the file of the District Munsif-cum-Judicial Magistrate, Senkottai, has filed this civil revision petition, challenging the dismissal order under Section 5 filed to condone the delay of the exparte decree passed in O.S.No.69 of 2009. The deceased is the first respondent, namely, Ganapathy who filed a suit for declaration and injunction and recovery of possession. The said suit was decreed exparte by the decree dated 27.10.2009. To set aside the same, a petition was filed by the petitioner under Section 5 of the Limitation Act with the delay of 839 days. The said application was contested by the respondent stating that the delay was not *bonafide* and there was no sufficient cause stated in the affidavit and hence



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sought for dismissal of the application.

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3. The learned trial Judge considering the counter filed by the respondent, namely, the deceased first respondent plaintiff in the suit, dismissed the application by the impugned order dated 27.10.2009. Challenging the same, the petitioner filed this revision petition.

4. According to the learned counsel for the petitioner, the defendant, namely the petitioner was not available in Chennai and he went to foreign country for vacation. In the said circumstances, no sufficient opportunity was given to him and hence, he sought to condone the delay. Further, he stated that the suit was for declaration title and recovery of possession and hence, the adjudication must be on merits. To substantiate the same, no records were produced before this Court and they produced passport to show that he was not available in Chennai on the date of passing the exparte decree.

5. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record and the precedents relied upon by them.



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6. This Court considered the petition filed by the petitioner to receive the document namely the original passport as additional document in C.M.P. (MD).No.2982 of 2024 and this Court accepted the reasons filed by the petitioner in paragraph Nos.3 and 4, which reads as follows:

3.It is submitted that the first respondent herein filed the Suit in O.S.No.69 of 2009 on the file of the District Munsif cum Judicial Magistrate, Sengottai against the petitioner and 2nd respondent herein for declaration title to the suit property, for permanent injunction and for alternative recovery of possession. The petitioner herein is the second defendant in the suit. The petitioner entered appearance through counsel and the suit was posted for filing written statement on 27.10.2009. It is pertinent to point out at this juncture that the petitioner was employed at Soudi Arabia and he used to visit India one in a year. The petitioner applied for visa and the same was issued for 2 months ie from 12.05.2009 to 03.07.2009. Within the said period the petitioner came to India and returned to Soudi Arabia on 18.06.2009 since the visa expired on 03.07.2009. During the stay at India the petitioner enquired about the case and the petitioner was told that the suit was pending. Thereafter, the suit was posted for filing written statement on 27.10.2009. During the visit to



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India the petitioner instructed the counsel to care of his case. Some how or other in the suit exparte decree was passed on 27.10.2009 since written statement was not filed on the hearing date.

4. It is submitted that the petitioner was not aware about the exparte decree dated 27.10.2009. The petitioner came to know about the same during the month of February 2011 after the notice in E.P.No.2/11. In order to execute the power deed the petitioner came to India on 07.02.2011 and the power deed was executed on 09.02.2011 and thereafter the petitioner returned on 11.02.2011. In order to execute the power deed the petitioner visited India and stayed for 4 days. Based on the power deed the power Agent Samsudin entered appearance in E.P.No.2/11. But unfortunately the petition to set aside the exparte decree dated 27.10.2009 was filed with a condone delay petition. Since the petitioner was at abroad, the documents relating to passport and visa could not be filed in the lower Court to show that plaintiff was not in India at the time of exparte decree passed.

7. In view of the same, the Court allowed the petition filed under Order 41 Rule 21 of C.P.C. Upon perusal of the passport, it is clear that the petitioner was not available in India. Further, the suit was filed for declaration of title and



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recovery of possession. In the said circumstances, as held by the Hon'ble Supreme Court in the case of *N.Balakrishnan V. M.Krishnamurthy*, reported in *1998 (7) SCC 123*, when the trial Court failed to exercise the discretion to condone the delay filed by the petitioner, this Court had power to exercise the jurisdiction to condone the delay. This Court perused the reason for the delay furnished before the Court below. The learned trial Judge dismissed the petition on the ground that there was no adequate documents to substantiate the plea that he was not available in India. But, to substantiate the plea, the petitioner filed his passport before this Court. This Court perused the document and is satisfied with the reasons furnished before this Court. Apart from that, in the suit for declaration and recovery of possession, sufficient opportunity is to be given to contest the suit on merits and this Court is inclined to allow the application in the interest of justice. Further, the case is to be considered under the parameter of the guidelines issued by the Hon'ble Supreme Court in the case of *N.Balakrishnan V. M.Krishnamurthy*, reported in *1998 (7) SCC 123*. The delay is extreme but the same was explained and therefore, as per the judgment of the Hon'ble Supreme Court, the party is to be compensated by way of costs and hence a sum of Rs.25,000/- is to be paid to the respondent within a period of six weeks from the date of receipt of a copy of this order and on such receipt of the copy of the



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order, the learned trial Judge is directed to restore the suit and dispose of the same within a period of six months from the date of receipt of a copy of this order.

8. With the above directions, this Civil Revision Petition stands allowed.

Consequently, connected miscellaneous petitions are closed.

25.03.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

The District Munsif cum Judicial Magistrate,
Senkottai.



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K.K.RAMAKRISHNAN, J.

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