



C.R.P.(MD)No.2638 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.2638 of 2022

State Bank of India Pazhavor
represented by its Branch Manager,
and having Office at 1/83,
South Street, Pazhavor,
Radhapuram Taluk,
Tirunelveli District.

... Petitioner/Petitioner/Plaintiff

Vs.

1.S.Thangaraja
2.S.Velayuthaperumal
3.S.Suyamburaja

... Respondents/Respondents/Defendants

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to pass an order by allowing the civil revision petition by set aside the impugned dismissal order, passed in I.A.No.377 of 2017 in O.S.No.139 of 2011, dated 19.04.2022, on the file of the Subordinate Court, Valliyoor.

For Petitioner : Mr.M.Ponniah

For Respondents : Mr.L.Rajaiya



C.R.P.(MD)No.2638 of 2022

ORDER

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This civil revision petition is filed to set aside the impugned dismissal order, passed in I.A.No.377 of 2017 in O.S.No.139 of 2011, dated 19.04.2022, on the file of the Subordinate Court, Valliyoor.

2.The facts in brief:

The suit in O.S.No.139 of 2011, was filed by the revision petitioner herein for recovery of a sum of Rs.4,63,785/-, with interest at the rate of 12.25%, based upon the mortgage. That suit was dismissed for default on 08.07.2015. To set aside the dismissal order I.A.No.377 of 2017 was filed under Section 5 of the Limitation Act to condone the delay of 367 days in filing the restoration application, stating that the official from the Revision Petitioner Bank was affected by diabetics, admitted in CSI Hospital, Palayamkottai. Later he was advised to take bed rest. So he could not file the petition within the time to restore the suit. So there is a delay of 367 days.

3.That was resisted by the respondent stating that proper reason is not assigned.



C.R.P.(MD)No.2638 of 2022

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4.After hearing both sides, the trial court dismissed the petition.

Against which this revision is preferred.

5.Perusal of the order passed by the trial court shows that reason assigned by the revision petitioner is not proper and acceptable. The learned counsel for the appellant would submit that by mistake the Advocate of the revision petitioner filed an affidavit along with the petition to condone the delay. But, the reason assigned in the affidavit is relating to the revision petitioner's officials.

6.Even though in the order, the trial court has not indicated anything, but the affidavit filed in respect of I.A.No.377 of 2017 shows that only the Advocate filed the affidavit and not the official from the Bank. It is nothing but a defective petition filed by the revision petitioner.

7.So without going into the merits of the matter liberty is granted to the revision petitioner herein to file appropriate petition by proper



C.R.P.(MD)No.2638 of 2022

affidavit from the concerned Officer. At the time of filing the fresh petition the time consumed in filing I.A.No.377 of 2017 and the subject revision may be deducted. With the above said liberty, this revision petition stands dismissed. No costs. Let the papers be returned to the petitioner by the Registry.

08.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Subordinate Judge, Valliyoor.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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C.R.P.(MD)No.2638 of 2022

G.ILANGOVA,J.

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C.R.P.(MD)No.2638 of 2022

08.11.2024