



C.R.P. (MD) No. 2204 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 2204 of 2023

M.K.Ganesan

... Petitioner/
Plaintiff

-VS-

M.K.Arumugam

... Respondent/
Defendant

PRAYER: Civil Revision Petition filed under Article 225 of the Constitution of India, to set aside the fair and decreetal order dated 19.07.2023 passed in I.A.No.231 of 2017 in O.S.No.33 of 2012 on the file of the District Munsif cum Judicial Magistrate Court, Rameswaram, Ramanathapuram.

For Petitioner : Mr.D.Balamurugapandi

For Respondents : Mr.S.Abubackker Sidhiq

ORDER

The Civil Revision Petition is filed to set aside the order dated 19.07.2023 made in I.A.No.1 of 2023 in I.A.No.231 of 2017 in O.S.No.33 of 2012.



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2. The O.S.No.33 of 2012 is filed by the plaintiff claiming half share in the suit property with the relief of partition against his brother. The said suit was resisted by the brother on the ground that even as per the Will, there was a clause to pay the debts and with an understanding that the defendant will pay the entire debts and enjoy the property, the plaintiff did not pay the debts and therefore, the defendant paid the entire money and he is in possession and enjoyment of the property. The suit was dismissed for default on 10.04.2014 since the plaintiff did not appear before the Trial Court. Thereafter, in the year 2016, the plaintiff filed an application to set aside the order of dismissal for default and to restore the suit on file along with an application to condone the delay of 1141 days. When the said application was posted for the appearance, again the petitioner side did not appear and the same was again dismissed for default on 22.06.2017. Thereafter, the present application is filed in the year 2023 along with the delay, to restore the said delay application.

3. By the aforesaid facts itself, it would be clear that that no Court would entertain the same and accordingly, the Trial Court dismissed the same, against which, the Civil Revision petition is filed.



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4. The learned Counsel for the petitioner would submit that when substantial injustice is about to be caused to the plaintiff, that is when he is going to lose his half share over the suit scheduled property, the Court should lean in favour of rendering substantial Justice and even though there may be some slackness on the part of the petitioner in pursuing the suit, the Court should take a lenient view. He would submit that he can be put to terms. He would further submit that the petitioner is a heart patient and was also serving the postal department at various places which all cumulatively became the reasons for such a huge delay.

5. The learned Counsel for the respondent would oppose the said submissions and submit that the reasons mentioned in the affidavit are not at all correct and the Trial Court is right in dismissing the application.

6. It can be seen that the dismissal for default is on 10.04.2014. Even, if a party may lose a substantial right, there is a reasonable limit for the leniency that can be shown by the Courts. Public policy also requires that there must be end to litigations. Parties, cannot take advantage of their own wrongs and keep on resurrecting stale matters. As stated above earlier, when the original petition for restoration itself is filed with condonation of delay, that also was not



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properly followed up and neither batta was paid nor the plaintiff appeared on the said date. Even the subsequent petition is filed again with a huge delay.

7. Therefore, by no stretch of imagination, any Court can accept the reasons as a sufficient reason for such kind of defaults and therefore, finding no merits, the Civil Revision Petition is dismissed. No Costs.

15.07.2024

Index : No
NCC : No

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To

1. The District Munsif cum Judicial Magistrate Court,
Rameswaram, Ramanathapuram.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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D.BHARATHA CHAKRAVARTHY, J.

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