



C.R.P(MD).No.2176 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.11.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

**C.R.P(MD)No.2176 of 2022
and
C.M.P(MD)No.10111 of 2022**

N.Kamaraj

... Petitioner / Defendant

Vs

S.Kaliyamoorthi

... Respondent / Plaintiff

Prayer : Civil Revision Petition is filed under Section 115 of C.P.C., Constitution of India, to call for the records and set aside the fair and decreetal order dated 05.08.2022 passed in I.A.No.1 of 2019 in I.A.No. 539 of 2018 in O.S.No.232/2016 on the file of the learned Additional District Munsif Judge, Thanjavur and allow this Civil Revision Petition.

For Petitioner : Mr.R.Maheswaran

For Respondent : No appearance



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ORDER

This Civil Revision Petition is filed to call for the records and set aside the fair and decreetal order dated 05.08.2022 passed in I.A.No.1 of 2019 in I.A.No.539 of 2018 in O.S.No.232/2016 on the file of the learned Additional District Munsif Judge, Thanjavur.

2. The facts in brief is that the respondent / plaintiff filed a suit in O.S.No.232 of 2016 as against the petitioner / defendant for recovery of money. When the suit was posted for cross examination of P.W.1 on 26.02.2018, the defendant failed to appear before the Court and hence he was set ex parte and an ex parte decree was also passed on 07.04.2018. To set aside the ex parte decree, the petitioner/ defendant filed an application in I.A.No.539 of 2018 with a delay of 42 days and the same was allowed by the trial Court on condition that the petitioner has to pay a sum of Rs.750/- on or before 04.01.2019 to respondent / plaintiff. But the petitioner has not complied with the order and hence the petition was dismissed. Thereafter, the petitioner filed an application in I.A.No.1 of 2019 to set aside the dismissal order passed in I.A.No.539 of 2018 with a delay of 15 days. The trial Court dismissed the application stating that



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the petitioner has not offered proper explanation for the delay.

Aggrieved over the same, the present Civil Revision Petition is filed.

3. When the matter was taken up for hearing on 02.11.2022, the following order was passed.

"3.The learned counsel further submits that the counsel, who filed the application in I.A.No.1 of 2019 before the trial Court was seriously ill during the relevant point of time and therefore there is a communication gap. That apart, the petitioner also affected with Typhoid and he was also taking treatment and hence there is a delay in paying the cost amount Rs.750/- within the stipulated time and for filing necessary application to condone the delay. He further submits that the counsel, namely G.Anand who filed the above interlocutory application also died subsequently. However, the petitioner has not taken this plea before the trial Court and there is no discussion with regard to that. He further submits that now the petitioner is prepared to pay additional cost of Rs.5000/- to the respondent / plaintiff."

4. In pursuance of the notice it appears that the respondent has not entered appearance either in person or through an advocate. After



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hearing the learned counsel for the petitioner the order is passed.

Eventhough, learned counsel for the petitioner submitted that he has already paid a sum of Rs.5000/-, but there is no indication to the effect that the petitioner has paid the amount of Rs.5,000/- to the respondent, as ordered by this Court dated 02.11.2022.

5. Considering the same, the offer amount of Rs.5,000/- made by the petitioner is enhanced by this Court to Rs.10,000/-, considering the oldness of the matter. Let the cost of Rs.10,000/- be deposited by the petitioner before the trial Court to the credit of the suit in O.S.No. 232/2016 within a period of 15 days from the date of receipt of a copy of this order. After the deposit is being made, learned Additional District Munsif Judge, Thanjavur, is directed to restore the suit in O.S.No. 232/2016 to its file and proceed in accordance with law and dispose the same as expeditiously as possible considering the oldness of the matter. If any failure in depositing the amount, this petition will stand automatically dismissed without further reference to the Court.



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6. With this direction, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition stands closed.

07.11.2024

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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To

- 1.The Additional District Munsif Judge, Thanjavur.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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ORDER
IN
C.R.P(MD)No.2176 of 2022
and
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