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CRP(MD)No.3409 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CRP(MD)No.3409 of 2023

P.Thangavel : Petitioner/Petitioner/
Defendant

Vs.

M.Kannan : Respondent/Respondent/
Plaintiff

PRAYER:-Civil Revision Petition has been filed under section 115 of the Civil Procedure Code, to set aside the fair and decreetal order in IA No.389 of 2019 in OS No. 1008 of 2017, dated 30/06/2023 on the file of the Subordinate Judge, Thirumangalam and pass such further or other orders.

For Petitioner : Mr.S.A.Ajmal Khal

For Respondent : Mr.Vijay Anand

O R D E R

This civil revision petition has been filed seeking to set aside the the fair and decreetal order, dated 30/06/2023 passed in IA No.389 of 2019 in OS No.1008 of 2017 by the Sub Judge, Thirumangalam.



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he failed to file the written statement and could not appear, since he was engaged in Seminar in his college. Even though, a request was made by him, that was not considered by the court. The decree was passed, on 18/09/2018. It was not informed to him by his Advocate. EP No.1 of 2019 was filed by the respondent to execute the decree. Only at that time, he came to know about the passing of the *ex-parte* decree. So, there is a delay of 319 days in filing the petition.'

5.That was resisted by the respondent stating that no proper reason was assigned by him; The reason assigned is also not reliable; The trial court dismissed the petition observing that there is an inordinate delay on the part of the petitioner in pursuing the matter properly; He cannot blame the Advocate, who was appearing for him before the trial court; since the reason assigned is not sufficient, it came to be dismissed by the trial court.

6.Against which, this civil revision petition is preferred.

7.Heard both sides.



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8.The learned counsel appearing for the petitioner would impress upon the court that because of his profession only, there was a delay on his part to enquire about the progress of the suit. His Advocate has also not properly informed him about the events. So according to him, the delay occurred neither is willful nor wanton.

9.Per contra, the learned counsel appearing for the respondent would submit that the delay is not properly explained. So no interference is called for. He would also rely upon the order of this court passed in CRP(NPD) No.1079 of 2010, dated 20/04/2010 (Murugan and another Vs. K.Elumalai and another). He would also rely up para 8 of the said order, which runs like this:-

'8.As per Section 5 of Limitation Act, the party who filed the petition should satisfactorily explain the delay. In the instant case, there is an inordinate delay of 586 days in filing the petition under Order 9 Rule 13 CPC. The defence raised by the petitioners that they were busy with their business, hence they could not file the petition under Order 9 Rule 13 CPC in time,



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cannot be legally sustainable. It is also well settled that a counsel is only the legal advisor guiding the parties to prosecute a case or defend the case, according to law, he cannot be construed as a full time 24 hrs servant of his client. As the petitioners have admittedly received the suit summons, it is their duty to take follow up action and know the progress of the case and instruct their counsel as and when required. The petitioners cannot shift the entire burden on their counsel to defend their case, even without disclosing the name of the Advocate and raise it as a defence to condone the delay of 586 days in filing a petition to set aside the exparte decree. The non-mentioning of the name of the counsel, date and other details regarding the same would show that the reason assigned by the petitioners cannot be construed as bonafide. Even if the averments made by the petitioners are true, the reason assigned by them



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*cannot be construed as a valid ground to
condone the inordinate delay."*

10.No doubt that there can be no quarrel on that proposition of law set out in that judgment. But the fact remains that the petitioner is a Professor working in a College in the responsible post. Even though the petitioner cannot blame the learned counsel, who is appearing for him before the trial court, but when the suit is filed for specific performance, I am of considered view that if any adverse order is passed against the right of the petitioner, his valuable right will be seriously prejudiced. On that account, this petition is liable to be allowed.

11.In the result, this civil revision petition is allowed. The fair and decreetal order, dated 30/06/2023 passed in IA No.389 of 2019 in OS No.1008 of 2017 by the Sub Judge, Thirumangalam is set aside. No costs.

11/03/2024

Index:Yes/No
Internet:Yes/No

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To,

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1.The Sub Court,
Thirumangalam,
Madurai District.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVA, J



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