



C.R.P.(MD)No.3114 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.3114 of 2023
and C.M.P.(MD).No.16060 of 2023

Athima Munivar Samuthaya Trust,
East Street,
Kattabomman Junction,
Nagercoil, Agasteeswaram Taluk,
Kanyakumari District.
Rep. by its Trustees

1.S.Govindaswamy
2.P.Annadurai

... Petitioner/Petitioner/Plaintiff

Vs.

S.Chandrasekaran

... Respondent/Respondent/Defendant

PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decretal order, dated 18.08.2023 passed in I.A.No.1 of 2023 in O.S.No.192 of 2013 on the file of the I Additional District Munsif Court, Nagercoil.

For Petitioner : Mr.R.Murugan

For Respondents : Mr.S.Rajasekar



C.R.P.(MD)No.3114 of 2023

ORDER

WEB COPY

This revision petition has been filed against the fair and decretal order, dated 18.08.2023 passed in I.A.No.1 of 2023 in O.S.No.192 of 2013 on the file of the I Additional District Munsif Court, Nagercoil.

2.Suit in O.S.No.192 of 2013 was filed by the plaintiff herein seeking the relief of permanent injunction and for cost. The defendant entered appearance and when the matter is posted for trial, the plaintiff remained absent and so it was dismissed for default. To restore that suit I.A.No.1 of 2023 was filed by the revision petitioners with a delay of 2840 days under Section 5 of the Limitation Act, that came to be dismissed by the trial Court, against which this revision is preferred.

3.Heard both sides.

4.At the time of hearing, the learned counsel for the respondent brought to the notice of this court that the petition itself is not maintainable, since already a similar petition was moved by the revision petitioner under Order 9 Rule 9 of C.P.C. to set aside the dismissal order



C.R.P.(MD)No.3114 of 2023

dated 24.02.2015. Notice was ordered to the respondent and finally batta was not paid. Again the petitioner was called absent, that petition was also dismissed for default on 10.08.2016 in I.A.No.329 of 2015. Against which, no steps have been taken by the revision petitioner to restore that dismissal order or petition as the case may be. Now the present attempt is made by the revision petitioner in the form of filing this impugned petition in I.A.No.1 of 2023, invoking the original cause of action namely the dismissal of the suit on 24.02.2015 simply stated that earlier counsel was not willing to take up the matter. So by change of counsel he has filed this petition. In the earlier petition it has been stated that the suit was posted for the trial on 24.02.2015. But they wrongly noted the date as 26.02.2015. So there was a default, which runs quite contrary to the averments made now. Such sort of contradictory averments perse condemnable should not be allowed to be raised. If such sort of contention are allowed to be raised which are contradictory in nature, it will amount to clear abuse of process of this Court.

5. When this defect was pointed out to the learned counsel for the revision petitioner, he sustained his arguments that delay may be



C.R.P.(MD)No.3114 of 2023

condoned and suit may be restored to file and he is also ready to pay the cost. But when the party comes to the Courts with contradictory averments that too in the affidavits to get favourable orders, then he is not entitled to any leniency from this Court. Even though the learned counsel for the petitioner relies upon the Judgment of the Honourable Supreme Court in the case of *Maniben Devaraj Shah Vs. Municipal Corporation of Brihan Mumbai* reported in (2012) 5 SCC 157 to impress this Court that in respect of like these matters the Court must take a lenient view, for the reasons stated above, he is not entitled for any discretionary relief from this Court. The petition deserves to be dismissed.

6. Accordingly, this revision petition stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

11.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TM

To

1. The I Additional District Munsif, Nagercoil.



C.R.P.(MD)No.3114 of 2023

2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.

WEB COPY



WEB COPY



C.R.P.(MD)No.3114 of 2023

G.ILANGO VAN,J.

TM

C.R.P.(MD)No.3114 of 2023

11.03.2024