



C.R.P(MD).No.562 of 2007

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : 29.02.2024

CORAM:

**THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN**

C.R.P.(MD).No.562 of 2007

The Superintending Engineer,  
National High Ways,  
2<sup>nd</sup> Circle, Madurai.  
Respondent

... Petitioners

Vs.

1.M/S.Ramanathan & CO,  
Its Managing Director,  
R.Paneer Selvam  
NO.2, Nadu Udayar Street,  
Mela Kalkandar Kottai.

2.The District Collector,  
Dindigul.

3.The Public works Department,  
St. George Fort,  
Chennai

... Respondent/1<sup>st</sup> Respondent

**Prayer** : Civil Revision Petition has been filed under Article 115 of C.P.C.,  
praying to allow the Civil Revision Petition and set aside the order dated



C.R.P(MD).No.562 of 2007

15.11.2006 made in I.A.No.5 of 2006 in O.S.No.308 of 2004 on the file of the Fast Track Court, Dindigul.

For Petitioner : Mr.A.K.Manikkam,  
Special Government Pleader  
For Respondents : No appearance for R1

### **ORDER**

This civil revision petition has been filed to set aside the order dated 15.11.2006 made in I.A.No.5 of 2006 in O.S.No.308 of 2004 on the file of the Fast Track Court, Dindigul.

2.The first respondent has participated in the tender proceedings initiated by the petitioner to lay the road at KM.395/2 of National Highways Road No.7, near Mettur Gate, Dindigul Anna District. Hence, he entered into an agreement and he was declared as a successful bidder in the tender held on 12.10.1998 and also the department allotted work in favour of him on 01.02.1989. The value of the contract is Rs.70,76,126/-. As per the contract, the work is to be completed within 18 months from the date of the agreement. But, the first respondent has not complied the terms of the



C.R.P(MD).No.562 of 2007

contract under tender condition and hence, the contract was cancelled on 28.02.1992. Hence, the first respondent filed a suit for declaration that the termination order passed dated 28.02.1992, by the second defendant in Memo No.22/88-89 is illegal, and for the recovery of the amount of Rs. 6,60,111/- with interest of 12% till the date of realisation. In the suit, the revision petitioner was arrayed as the first defendant, the respondent Nos. 2 and 3 were arrayed as defendants 3 and 4. The revision petitioner filed a written statement denying the allegation made in the plaint and also he disputed the liability and he reiterated the order of cancellation of the contract. The case was posted for the cross-examination of the plaintiff and at that time, there was no cross-examination and hence, the learned trial judge decreed the suit ex-parte by order dated 06.09.2005. To set aside the same, he filed I.A.No.5 of 2006 under Section 5 of the Limitation Act with a delay of 96 days. The said application was dismissed by the learner trial judge by passing the impugned order, dated 15.11.2006 in IA No.5 of 2006.

3. When the matter is taken up for hearing today, the learned counsel appearing for the petitioner would submit that the learned trial Judge failed to note that the delay is only 90 days and it is not inordinate delay. He



C.R.P(MD).No.562 of 2007

further submitted that the trial Court ought to have granted reasonable opportunity to the petitioner to put his case before the trial Court. Hence, he seeks to allow this petition.

4.This Court issued notice to the first respondent. Even though he was served, there was no representation. Hence, this Court has, without any other option, took up the matter for final disposal.

5.This Court considered the rival submission made by the learned counsel appearing for the petitioner and also perused the materials available on record.

6.Admittedly, the first respondent filed a suit for declaration that the termination order passed dated 28.02.1992 by the second defendant in Memo No.22/88-89 is illegal, and also claiming relief for recovery of amount. In the said circumstances, the petitioner also filed the written statement and contested the suit and the case was posted for cross examination of the plaintiff/P.W.1, the concerned officers, namely the defendants, were engaged in some other official duties and hence, they were



C.R.P(MD).No.562 of 2007

not able to appear before the trial Court and so, there was no cross-examination and hence, the learned trial judge decreed the suit ex-parte by order dated 06.09.2005. To set aside the same, the petitioner filed I.A.No.5 of 2006 under Section 5 of the Limitation Act to condone the delay of 96 days. In the affidavit, it had been stated that from 06.09.2005 onwards, there was incessant rain and hence, the petitioner filed a petition with a delay of 96 days in filing the petition and sought to set aside the expert degree. The first respondent filed the counter. He did not deny the said fact that there was incessant rain for 60 days. Further, the officer stated the fact that there was incessant rain and hence, he was not able to approach the Court within time. Hence, the said delay is not willful. In view of the dispute relating to the recovery of the amount after the cancellation of the contract, the adjudication is necessary in the interest of the both parties. In such circumstances, this Court inclines to condone the delay of 96 days on the satisfaction of the reason stated by the officer/petitioner. The submission of the learned counsel appearing for the petitioner that only due to the incessant rain for 60 days, he was unable to approach the Court seems to be bona fide.



C.R.P(MD).No.562 of 2007

7. Accordingly, this civil revision petition is allowed with the following directions:

7.1. The impugned order dated 15.11.2006, passed in I.A.No.5 of 2006 in O.S.No.308 of 2004 by the Fast Track Court, Dindigul, is set aside.

7.2. The learned trial Judge is hereby directed to dispose of the case within a period of nine months from the date of restoring the case.

7.3. This Court hereby directs the concerned officer to cooperate with the trial.

**29.02.2024**

NCC : Yes / No  
Index : Yes / No  
*Internet* : *Yes / No*  
vsg



C.R.P(MD).No.562 of 2007

WEB COPY

To

- 1.The Fast Track Court,  
Dindigul.
- 2.The District Collector,  
Dindigul.
- 3.The Public works Department,  
St. George Fort,  
Chennai
4. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



C.R.P(MD).No.562 of 2007

**K.K.RAMAKRISHNAN, J.,**

*vsg*

**C.R.P.(MD).No.562 of 2007**

**Dated: 29.02.2024**