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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 12.2.2025.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.492 of 2024

Jayaraman

Petitioner

vs.

Ganesan

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 12.12.2023 passed in I.A.No.431 of 2023 in O.S.No.337 of 2021 on the file of the Principal Subordinate Judge, Villupuram.

For Petitioner : Mr.T.K.Saravanan

For Respondents : Mr.C.Iyyapa Raj

ORDER

Challenging the order dated 12.12.2023 passed by the Principal Subordinate Judge, Villupuram in I.A.No.431 of 2023 in O.S.No.337 of 2021 condoning the delay of 249 days in filing the application under Order IX Rule 13 CPC to set aside the ex parte decree dated 15.7.2022, the present civil revision petition has been filed by the plaintiff.



2. Brief facts of the case:-

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i) The petitioner herein had filed a suit in O.S.No.337 of 2021 against the respondent/defendant seeking a relief of permanent injunction on the basis of an agreement of sale dated 3.8.2019 or in the alternative a relief of refund of amount paid by him.

ii) The respondent/defendant, on service of summons, was represented by a counsel, however, he remained absent later on and thereby, he was set ex parte on 8.4.2022 and an ex parte decree came to be passed on 15.7.2022, of course, considering the oral and documentary evidence submitted by the petitioner/plaintiff.

iii) Subsequently, the respondent/defendant had filed an application in I.A.No.431 of 2023 seeking to condone the delay of 249 days in filing the petition to set aside the ex parte decree. The said application was allowed with costs by the Trial Court taking a view that an opportunity needs to be given to the respondent/defendant.

iv) Challenging the above order, the present civil revision petition has been filed by the plaintiff.

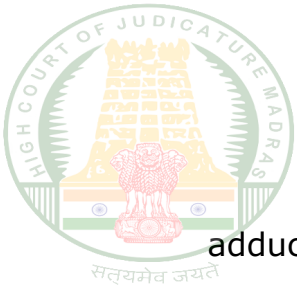
3. Learned counsel for the petitioner would submit that the Trial Court has erred in allowing the application to condone the delay in filing the petition to set aside the ex parte decree, without appreciating



that the ex parte decree was passed on 15.7.2022, subsequently, the petitioner/plaintiff had filed E.P.No.278 of 2022 on 21.9.2022 and notice thereupon was served on the respondent/defendant for the hearing of the execution proceedings on 26.1.2023, however, the respondent/defendant had filed the application to condone the delay only on 20.4.2023, after having not taken any steps all along from 15.7.2022, without any sufficient cause for the delay of 249 days, with a mala fide intention only to prolong the execution proceedings and thereby, the order passed by the Trial Court in condoning the delay warrants interference by this court.

4. Learned counsel appearing for the respondent/defendant would submit that the respondent was affected by jaundice at the relevant time and thereby, he could not follow up the proceedings and instruct his counsel and the delay is neither wilful nor wanton. He further submitted that the Trial Court, having considered the plight of the respondent/defendant, allowed the petition condoning the delay, which does not warrant any interference. He would also submit that the respondent is ready to co-operate for speedy trial of the suit.

5. Having heard the learned counsel for the parties and perused the materials available on record and also considering the reason



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adduced by the respondent/defendant for the delay in approaching the court to set aside the ex parte decree, this court is of the view that the suit being one for specific performance, the order passed by the Trial Court affording an opportunity to the respondent/defendant to put forth his defence, imposing a cost of Rs.2000/- payable by the respondent/defendant to the petitioner/plaintiff, needs no interference.

6. In view of the above, the civil revision petition is dismissed, however, with a direction to the learned Principal Sub Court, Villupuram to complete the trial in O.S.No.337 of 2021 and dispose the suit afresh, as expeditiously as possible, preferably within a period of four months from the date of restoration of the same. The respondent/defendant shall cooperate for speedy disposal of the suit. No costs.

12.2.2025.

Index: Yes/No.
Internet: Yes/No.
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To

Principal Subordinate Judge,
Villupuram.



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A.D.JAGADISH CHANDIRA, J.

Ssk.

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