



C.R.P.No.669 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 08..07..2025

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.669 of 2020
and
C.M.P.No.3480 of 2020

- 1.Prabakaran
- 2.Baskaran
- 3.Prakash
- 4.Suresh
- 5.Karthikeayan

..... Petitioners

-Versus-

- 1.Dhanam
- 2.Indirani
- 3.Ambiga
- 4.Natarajan
- 5.Ambalanathan
- 6.Arumugam
- 7.Ramakrishnan
- 8.Kothandapani

..... Respondents

Petition filed under Section 115 of the Code of Civil Procedure, 1908, praying to set aside the order and decretal order dated 14.11.2018 made in I.A.No.208 of 2013 in I.A.No.3199 of 2010 in O.S.No.184 of 2002 on the file of the learned I Additional District Munsif, Puducherry.



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For Petitioner : Mr.T.S.Baskaran

For Respondent : No appearance for RR2 to 8

R1 – Died

ORDER

This Civil Revision Petition has been filed challenging the order dated 14.11.2018 passed by the learned I Additional District Munsif, Puducherry, whereby I.A. No. 208 of 2013, filed under Section 5 of the Limitation Act, 1963 for condonation of 156 days' delay, was dismissed. The delay pertained to the filing of an application to restore I.A. No. 3199 of 2010 in O.S. No. 184 of 2002, which had been dismissed for default on 30.08.2012 due to the non-appearance of the revision petitioners/plaintiffs.

2. The revision petitioners are plaintiffs in O.S.No.184 of 2002 and the respondents are defendants. The suit was for a judgment and decree of declaration declaring that the decree in O.S.No.895 of 1978 on the file of the Principal District Judge, Puducherry is not true, valid and binding on the plaintiffs and for permanent injunction restraining the defendants 1 to 6 in the suit from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit properties.

3. When the suit was posted for the cross-examination of P.W.1, the petitioner could not appear due to acute dysentery, resulting in dismissal of the

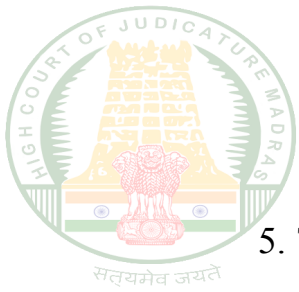


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suit for default. He was informed on 08.09.2010 and filed I.A. No. 3199 of

2010 to restore the suit. On 25.08.2012, he again fell ill, was later diagnosed with jaundice in September, and recovered by December 2012 after undergoing native treatment and rest. In February 2013, upon contacting his counsel, he learned that fresh notice had been ordered to respondents 7 and 8. Though the record showed service, the notes paper reflected pending notice. However, on 30.08.2012, I.A. No. 3199 of 2010 was dismissed for default. It is submitted that the court ought to have dismissed the application only as against respondents 7 and 8, and not in its entirety. Owing to these circumstances, there was a delay in filing the application to restore I.A. No. 3199 of 2010 under Order IX Rule 9 CPC.

4. The 6th respondent filed a counter, contending that the petitioners' intention is merely to keep the litigation pending by one means or another, with the sole objective of defeating the decree passed in O.S. No. 895 of 1978. He submitted that the original suit has become infructuous, as the decree in O.S. No. 895 of 1978 has already been executed and has attained finality. According to him, the petitioners are prolonging the proceedings solely to harass the respondents. He further submitted that the delay has not been properly explained. Hence, he prayed for the dismissal of the application.



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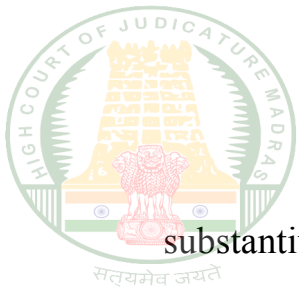
5. The trial court, upon examining the records, dismissed the application on the ground that no sufficient cause was properly shown, and held that the petitioners were merely attempting to prolong the proceedings without cooperating in the disposal of the suit.

6. This Court has heard the submissions made by both sides and has carefully perused the materials available on record.

7. The present application has been filed to restore an earlier application, which itself sought restoration of the suit dismissed for default. It is a well-established principle of law that every lis should be decided on merits rather than on technical grounds. Courts have consistently held that procedural delays should not defeat substantive rights, particularly when the delay is neither deliberate nor motivated by malice.

8. What is required under Order IX Rule 9 of the CPC is *sufficient cause* that prevented the defendants from appearing before the Court when the suit was called on for hearing. Therefore, it is imperative that sufficient cause be shown by the party. It is relevant to note that, though the party has not established sufficient cause, while deciding whether there is sufficient cause or not, the Court must also bear in mind the objective of doing substantive justice.

9. The conduct of the party in the present case, though not appealing to the satisfaction of this Court, cannot by itself be a ground to take away the



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substantive right.

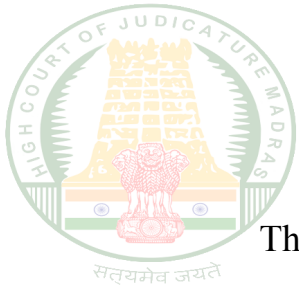
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10. Further, it is relevant to note that the Hon'ble Apex Court, in the case of *Robin Thapa v. Rohit Dora*, reported in (2019) 7 SCC 359, held that litigation should be based on adjudication of the merits of the parties' contentions. Litigation should not be terminated by default, whether on the part of the plaintiff or the defendant. The cause of justice requires that, as far as possible, adjudication be done on merits. Therefore, this Court is inclined to grant one more opportunity to the parties to contest the suit on merits.

11. In the interest of justice, a liberal approach is warranted, especially when denying the opportunity to contest the matter on merits would result in irreparable prejudice to the petitioner. Courts must lean in favor of advancing substantial justice, rather than punishing parties for procedural lapses that have been reasonably explained.

12. For the foregoing reasons, this Court is inclined to condone the delay by allowing this revision petition. Accordingly, the revision petition succeeds.

In the result, the Civil Revision Petition is allowed. The impugned order dated 14.11.2018 passed by the learned I Additional District Munsif, Puducherry, in I.A. No. 208 of 2013 is hereby set aside. Consequently, I.A.No.208 of 2013 is allowed, and the delay of 156 days in filing the application to restore I.A. No. 3199 of 2010 stands condoned.



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The trial court is directed to restore I.A.No. 3199 of 2010 to file and dispose of the same on merits. If the said application is allowed, the trial court shall proceed to dispose of the suit in O.S. No. 184 of 2002 on merits within a period of three months thereafter.

Index : yes / no
Neutral Citation : yes / no

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To
1.The I Additional District Munsif, Puducherry.



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N.SATHISH KUMAR.J.,

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