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C.R.P. (NPD) .No.670 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD).No.670 of 2022
and C.M.P.No.3427 of 2022

P.Sivaraj

.. Petitioner

Vs.

C.Jayaraman

.. Respondent

Prayer: This Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, praying to quash the order dated 29.04.2021 made in I.A.No.1 of 2020 in Unnumbered AS.Sr.No.3459 of 2020, on the file of the Principal District Court, Salem.

For Petitioner : Ms.J.Pooja
for Mr.D.Baskar

For Respondent : Mr.T.S.Vijayaraghavan

ORDER

This civil revision petition arises against the order of the learned Principal District Judge, Salem, dated 29.04.2021 in I.A.No.1 of 2020 in Unnumbered AS.Sr.No.3459 of 2020.



2.Heard Ms.J.Pooja for the petitioner and Mr.T.S.Vijayaraghavan for the respondent.

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3.The parties shall be referred to as per their rank in the suit.

4.The defendant is the civil revision petitioner and the plaintiff is the respondent.

5.The plaintiff presented O.S.No.144 of 2008 on the file of the I Additional Subordinate Judge at Salem, seeking specific performance of an agreement of sale dated 16.02.2004. The suit came to be decreed as prayed for on 24.10.2008. On the strength of the decree, the plaintiff presented R.E.P.No.275 of 2020, seeking execution of the sale deed in terms of the decree. Subsequently, the defendant presented a regular appeal before the learned Principal District Judge, Salem, as against the decree. By the time the appeal came to be presented, it was out of time. Hence, the defendant filed an application to condone the delay of 459 days in presenting the appeal.

6.The ground on which the defendant sought the invocation of order

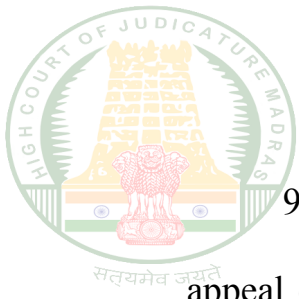


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XLI Rule 3A(1) of the Civil Procedure Code was that, he was suffering from a spinal cord injury and on account of that fact, he had to take treatment in Kerala. He produced a medical certificate dated 09.03.2021, from the Adi Dravida Tribel Ethno Medicine Research Centre, Kappalli, Malakkallu P.O., Rajapuram Via, Kasaragod District. In terms of the medical certificate, the Native Doctor has certified that the defendant was undergoing treatment from 10.08.2018 to 09.01.2020. Pleading medical reasons, the defendant sought the delay to be condoned.

7.The learned Principal District Judge received this application as I.A.No.1 of 2020 and ordered notice. The plaintiff filed a detailed counter pointing out that the defendant had not even appeared before the Trial Court to let in evidence and that, it was only after the suit had been decreed, he had come forward to file an application. The plea was that the application was filed only to drag on the proceedings and to harass him by taking note of filing of the execution petition in R.E.P.No.275 of 2020.

8.Before the learned Principal District Judge, the defendant examined himself as P.W.1 and marked the aforesaid medical certificate as Ex.P1.



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9.The learned Principal District Judge took note of the fact that the appeal came to be presented only after the service of the execution petition and that he had filed the application only to drag on the proceedings. The learned District Judge also found fault with the defendant for not giving instructions to his relatives to file an appeal in time. Consequently, he dismissed the application. Hence, the revision.

10.The certificate issued by the Native Doctor shows that the defendant was in continuous treatment for “Spinal Card Pain and Back Neck Pain”. The treatment has been close to a period of 1 & ½ years from 10.08.2018 to 09.01.2020. Medical reason is a ground to get the delay condoned. To expect the defendant to summon the Doctor, who issued the certificate from Kasaragod District to come over to Salem, to depose as regards the medical illness of the defendant, is putting a high order on the defendant to discharge. The decree is one for specific performance of an agreement of sale. Vital rights relating to immovable property are involved. When a person pleads that on account of sickness, he was not in a position to give instructions to his lawyer to file an appeal, the learned First Appellate Court need not have called upon him to give instructions over e-mail to his relatives for filing an



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appeal. When the certificate has not been found to be a fraudulent one made ready for the purpose of the case, I am inclined to accept the same. Yet, the interests of the plaintiff will also have to be taken into consideration. The defendant will have to pay heavy costs to the plaintiff.

11. Accordingly, the delay of 459 days in filing the appeal is condoned on the condition that the defendant pays the plaintiff a sum of **Rs.10,000/- (Rupees Ten Thousand Only)** within a period of **four (4) weeks** from the date of receipt of a copy of this order. In case the defendant does not pay the aforesaid amount within the stipulated time, the Civil Revision Petition would stand dismissed without further notice to this Court.

12. In the result, this Civil Revision Petition is allowed in the above terms. Consequently, the connected miscellaneous petition is closed. No costs.

25.07.2025

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No



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V.LAKSHMINARAYANAN, J.

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To

The Principal District Judge,
Principal District Court,
Salem.

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