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C.R.P.(PD)No.4969 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.01.2025**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4969 of 2024
and C.M.P.No.27948 of 2024

V.R.Aathinarayanan

.. Petitioner

Vs.

1.G.Shanmugavelu
2.R.Rajendran
3.C.Annamalai

4.M/s.Alpha Projects (P) Ltd.,
by its Director, P.S.Singhani
No.1697, H Block, 11th main road,
Annna nagar, Chennai-40.

5.The Tahsildhar,
Tirvarur Taluk,
Having office at Taluk Office campus
J.N.Road, Tiruvallur Taluk.

6.The Sub-Registrar,
Tiruvallur District,
Having office at Tiruvallur Taluk.

7.The District Collector,
Tiruvallur District at Tiruvallur.

.. Respondents



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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 24.07.2024 made in I.A.No.1 of 2024 in un-numbered O.S.SR.No.8141 of 2009 on the file of the learned Principal District Judge at Tiruvallur in dismissing the application taken out under Section 151 of C.P.C. to condone the delay of 4379 days in re-presenting the plaint in O.S.SR.No.8141 of 2009.

For Petitioner : Mr.D.Ashok Kumar

For RR 5 to 7 : Mr.M.Murali, Govt. Advocate

ORDER

This civil revision petition arises against the order passed by the learned Principal District Judge at Tiruvallur in I.A.No.1 of 2024 in O.S.SR.No.8141 of 2009, dated 24.07.2024.

2. The civil revision petitioner is the plaintiff in the suit. He presented O.S.SR.No.8141 of 2009 seeking for the following reliefs:

“(i) Specific performance directing the defendants 1 to 3 to execute the sale deed in respect of the suit properties to and in favour of the plaintiff and



or his authorised after receiving the balance sale consideration and on their failure to do so this Honourable Court may be pleased to cause execution of the sale deed in respect of the suit properties in favour of the plaintiff.

(ii) To declare the invalid sale deed dated 17.06.2005 in document No.4833 of 2005 executed by the defendants 1 to 3 at the office of the SRO, Tiruvallur to the 4th defendant, in respect of the suit properties.

(iii) For permanent injunction restraining the defendants 1 to 4, their men, agents, supporters, executors and any person acting under them from trespassing into the suit properties in any manner whatsoever.

(iv) For permanent injunction restraining the defendants 1 to 4, their men, agents, executors, supporters or any person acting under them from alienating the suit properties and or causing any encumbrance defendant over the same in any manner whatsoever, with 6th defendant over the same in any manner whatsoever.

(v) For permanent injunction restraining the defendants 1 to 4, their men, agents, executors, supporters or any person acting under them from causing name change of patta or any mutation in



revenue records with the 6th defendant over the same in any manner whatsoever. ”

3. The plaint was presented on 03.12.2009. It was returned on 23.12.2009. Thereafter, the returns, that were called upon to be complied, were complied with and the plaint was re-presented on 17.02.2010. Yet again, it was returned on 09.03.2010 and re-presented on 02.08.2010. Finally, it was returned on 23.08.2010 and it was re-presented after a period of 12 years only on 19.09.2022. The ground, on which the delay in re-presentation was sought to be condoned, was that the counsel, who had received the papers, had misplaced them and was not in a position to trace them easily. By the time he traced the papers, the pandemic caused due to Covid – 19 intervened and it will cause further delay.

4. The plaintiff pleaded the delay in re-presentation was only on account of the misplacement of the papers in the office of the counsel. Hence, he filed an application in I.A.No.1 of 2024 seeking to condone the delay of 4379 days in re-presenting the papers.



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5. The learned Principal District Judge took note of the fact that the delay of 4379 days in re-presentation is enormous and if it were condoned, the valuable right of limitation available to the respondents would be lost. She found that, even if exemption is granted for the period covered under Covid - 19, still the delay is about ten years. Coming to the conclusion that the delay in re-presentation is beyond the period of limitation for presentation of the suit, she dismissed the same.

6. Aggrieved by the said order, the present civil revision petition is before the Court.

7. I heard Mr.D.Ashok Kumar for the civil revision petitioner and Mr.M.Murali, learned Government Advocate, for respondents 5 to 7.

8. Mr.D.Ashok Kumar points out that the plaintiff cannot be found fault with. He had entered into an agreement with the defendants as early as 18.03.1999. He had engaged a counsel to issue a notice on 14.05.2003. He had, soon thereafter, presented another suit for an injunction and had engaged a lawyer to file the suit. The counsel, who had presented the



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suit, has misplaced the papers and this resulted the plaintiff not being in a position to prosecute the suit immediately.

9. I have carefully considered the submissions and perused the entire records.

10. The view taken by the learned Principal District Judge at Tiruvallur that the delay in re-presentation must be compared with the delay in filing, does not pass muster. While the delay in filing cannot be condoned on the Original Side as the suit would be barred, the delay in re-presentation is certainly condonable by the Court. On account of the mistake committed by the Advocate, the party should not be penalised. I am aware that the delay is about ten years. The plaintiff has pleaded that he had approached the lawyer to restore the papers to him. Yet, the papers were not restored to him or to the Court.

11. Delay in re-presentation is a matter between the Court and the party. (*See Y.Cusbar v. K.Subbarayan, 1993 TLNJ 375*). The aspect of readiness and willingness can always be gone into by the Court at the time of disposal of the suit. If heavy costs had been imposed by the



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learned Trial Judge for the purpose of condonation of delay, leaving it open to the defendants to raise the plea of delay in re-presentation, having a repercussion on the aspect of readiness and willingness under Section 16(c), it would have served the ends of justice.

12. In the light of the above discussions, as the plaintiff had done all that he could do by engaging a lawyer and since the mistake was on the lawyer in not re-presenting the papers in time, I am inclined to set aside the order of the learned Trial Judge and condone the delay. However, for the delay caused, the plaintiff has to pay heavy costs to defendants 1 to 4.

13. Accordingly, the civil revision petition stands allowed on the following terms:

(i) The delay of 4379 days in re-presenting the plaint in O.S.SR.No.8141 of 2009 is condoned.

(ii) The order passed by the learned Principal District Judge at Tiruvallur in I.A.No.1 of 2024 in un-numbered O.S.SR.No.8141 of 2009 dated 27.04.2024 is set aside on the condition that the plaintiff pays a sum of **Rs.1,00,000/-** (Rupees one lakh only) **each** to defendants 1 to 4



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within a period of four weeks from the date of receipt of a copy of this order.

(iii) Only when the proof of payment is shown by the plaintiff to the Trial Court, the suit should be taken on file.

Consequently, connected miscellaneous petition is closed.

09.01.2025

Index:Yes/No
Internet:yes/No
Neutral Citation:Yes/No
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To

1.The Principal District Judge at Tiruvallur.

2.The Tahsildhar,
Tirvarur Taluk,
Having office at Taluk Office campus
J.N.Road, Tiruvallur Taluk.

3.The Sub-Registrar,
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V.LAKSHMINARAYANAN,J.

Kj

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