



C.R.P.(NPD)No.4895 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.01.2025

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The Hon'ble Mr.Justice N.Sathish Kumar

C.R.P.(NPD)No.4895 of 2023

and

C.M.P.No.28902 of 2023

Govindaraji

.. Revision Petitioner

Vs.

Govindasamy

..Respondent

This Civil Revision Petition has been filed under Section 115 of CPC against the fair and decreetal order dated 28.08.2023, made in I.A.No.1 of 2022 in O.S.No.113 of 2012 on the file of the District Munsif Court, Uthangarai, Krishnagiri District.

For Revision Petitioner : Mr.C.Prabakaran

For Respondent : Mr.J.Pradeep

O R D E R

This Civil Revision Petition is filed against the order made in I.A.No.1 of 2022 in O.S.No.113 of 2012 on the file of the District Munsif Court, Uthangarai, Krishnagiri District (hereinafter, referred to as the Trial Court') dated 28.08.2023.



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2. The brief facts of the case are as follows:-

i) The revision petitioner filed a suit in O.S.No.113 of 2012 seeking for the relief of declaration of title and permanent injunction. The suit dismissed for default on 21.11.2017 when it was posted for trial in special list. Immediately, the revision petitioner/plaintiff filed an application for restoration of the suit on 04.12.2017. The said Restoration Application was returned for certain defects on 21.08.2018 and thereafter, the application has not been numbered. Hence, a memo was filed by the revision petitioner/plaintiff seeking for a direction of the trial Court to number the application. Thereafter, the petitioner came to know that the application was returned from the Court on 24.08.2018 itself and the said application is found missing in the Advocate's Office and therefore, the revision petitioner/plaintiff filed another application in I.A.No.1 of 2022 along with a Condone Delay Application. The said application has been dismissed by the Trial Court. Challenging the same, the present Civil Revision Petition is filed.

3. The learned counsel appearing for the revision petitioner



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would submit that as against the dismissal of the suit, the revision petitioner

filed an Application for Restoration on 04.12.2017, but the same was returned back by the Trial Court for certain defects; that thereafter, since the said application was re-presented by him on the very same date itself, i.e. on 21.08.2018, the revision petitioner was under the impression that the application would get numbered at any point of time; that only when the Advocate engaged by the revision petitioner informed him that the Restoration Application was not yet numbered and kept pending in the Court, the revision petitioner so as to know about the status of the application, filed a Memo; that it was only thereafter, the revision petitioner came to understand that the Restoration Application was returned as early as on 24.08.2018 and the same got misplaced in the Advocate's Office; that immediately thereafter, the revision petitioner filed an Application under Order IX Rule 99 CPC for restoration of the suit, however, in the meantime, there happened to be a delay of 1818 days in doing so. Hence, the learned counsel contended that delay on the part of the revision petitioner in re-presenting the Restoration Application is neither wilful nor wanton but owing to the fact that the revision petitioner was totally ignorant as to when



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the earlier Restoration Application dated 04.08.2018 was returned back by the Trial Court on 24.08.2018 itself, and how the same misplaced in the Advocate's Office.

4. Per contra, the learned counsel for the respondent refuted the contentions of the revision petitioner by contending that the revision petitioner/plaintiff has not approached the Court with clean hands, for, the reason assigned by the revision petitioner/plaintiff for the delay is neither genuine nor convincing; that already the suit filed by the revision petitioner was dismissed for default on account of his non-appearance, thereafter, when the revision petitioner decided to file Application for Restoration of the Suit, he ought to have been vigilant in pursuing the same; that, the Trial Court, having found his lackadaisical attitude and after having properly analysed the entire issue, rightly dismissed the Application and further, in an Application for Condonation of Delay, each and every day delay has to be properly explained, and in the present case, reason for the delay has not been properly explained, hence, the order passed by the Trial Court calls for no interference.



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5. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent and perused the materials available on record.

6. On perusal of entire materials placed on records, this Court is of the view that *lis* cannot be thrown out at the initial stage itself merely on the basis of some mistakes or negligence either on the part of the parties or Advocates. Only when the party was found to be negligent through out the proceeding in not taking any steps to pursue the matter before the Court of law, despite sufficient opportunities, the party cannot be entitled to benevolent approach by the Court; that whereas, if the party was found to be prompt in filing the application, immediately after the dismissal of the suit' that such suit has not been properly numbered for some other reasons and kept pending, and subsequently returned, thereafter, it was went missing in the Advocate office, which was the reason for the delay, such situation cannot be ignored all together.



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6.1 In a given case, immediately after dismissal of the suit on 21.11.2017, application under Order IX Rule 9 was filed for restoration on 04.12.2017. Thereafter, when the said Application for returned for certain defects on 21.08.2018, the same was re-presented by the revision petitioner on the same day itself. This has been admitted by both sides. However, unfortunately, the said Restoration Application was again returned on 24.08.2018, which fact was unknown to the revision petitioner, as the revision petitioner, who re-presented the papers on 21.08.2018 was under the hope that the application would get numbered at any point of time, however, the revision petitioner was informed by his Advocate that the application was still kept pending in Court. Thereafter, the revision petitioner filed a memo alleging that the application has been kept pending in the Court records, however, on scrutiny of records, the revision petitioner, to his shock and surprise came to understand that the Restoration Application dated 04.12.2017, was returned by the Court as early as on 24.08.2018 itself, which was not re-presented properly, thereafter, fresh application has been taken out by the revision petitioner.



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6.2 Thus, from the very conduct of the revision petitioner in filing the applications promptly would indicate that he wanted to pursue the matter to prove his substantial rights.

6.3 Further, the above facts would also clearly indicate that only due to the mistake on the part of Advocate, whom, the revision petitioner has engaged remained careless in pursuing the Application, the application could not be filed in time. Had the learned counsel been vigilant in following the case, the revision petitioner, would perhaps, re-presented the application in time, whereby, the present situation would not have arisen.

6.4 Therefore, considering the above aspects, this Court, in order to give one more opportunity to the revision petitioner, who is the plaintiff, in the suit, to establish his substantive rights, is inclined to set aside the order passed by the Trial Court and takes liberal approach in this case by condoning the delay, however, subject to the condition that the revision petitioner pays a sum of Rs.10,000/- as cost to the respondent.



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7. Accordingly, the Revision Petition is allowed, the impugned order dated 28.08.2023 is set aside. The revision petitioner is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand Only) to the respondent within a period of two weeks from the date of receipt of a certified copy of this order. On such payment, the suit shall be restored on file and disposed of by the Trial Court as expeditiously as possible, preferably, within six months thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

02.01.2025

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To

District Munsif Court, Uthangarai,
Krishnagiri District.



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N.Sathish Kumar,J.,

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