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C.R.P.(NPD) No.5359 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.01.2025

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THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.5359 of 2024
and C.M.P.No.29741 of 2024

Neelamegam ... Respondent/Plaintiff/Petitioner

-VS-

Annadurai ... Petitioner/Defendant/Respondent

Prayer: Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decreetal order passed in I.A.No.2 of 2024 in O.S.No.224 of 2016 dated 22.11.2024 on the file of the Additional District Munsif Court, Ariyalur.

For Petitioner : Mr.S.Kamadevan

ORDER

Challenging the impugned order dated 22.11.2024 of the Trial Court allowing the application to condone the delay to file a petition to set aside the *ex parte* order, the present revision petition has been filed.

2. Notice to the respondent is dispensed with, as no adverse order is going to be passed against him.

Facts of the case in nutshell:



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3. Originally, a suit in O.S.No.224 of 2016 had been filed for declaration and recovery of possession and the suit had been proceeded *ex parte*. Subsequently, an Execution Petition in E.P.No.11 of 2024 was filed, in which delivery was ordered. At this stage, the respondent herein had filed an application to set aside the *ex parte* decree with the delay of 238 days under Section 5 of the Limitation Act. The said application has been allowed by the Trial Court, subject to payment of Rs.500/- to the revision petitioner herein payable on or before 28.11.2024. Challenging the said order, the present revision petition has been filed.

4. Learned counsel for the revision petitioner would mainly submit that the Trial Court has casually allowed the application without even assessing the conduct of the respondent. When the matter was posted on 27.09.2023, P.W.1 was examined and from that date, despite several opportunities being given, P.W.1 was not cross examined and therefore, the suit has been decreed on 05.01.2024.

5. I have perused the material documents available on record.



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6. The conduct of the defendant before the Trial Court indicates that he somehow attempted to drag on the proceedings. But, the fact remains that merely because the defendant had taken some adjournments, it cannot be said that the entire defence available to the defendant has to be struck off and no opportunity should be given to him. The Trial Court in its discretion has granted an opportunity to the defendant to participate in the Trial to adjudicate the substantial issue between the parties. Therefore, this Court does not find any merit in this petition.

7. Accordingly, this Civil Revision Petition is dismissed. However, taking note of the fact that the defendant has delayed the proceedings, the Trial Court shall dispose of the main suit within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

06.01.2025

Index: Yes / No
Internet: Yes / No
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N.SATHISH KUMAR,J.,

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To:

The Additional District Munsif,
Ariyalur.

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06.01.2025