



C.R.P(NPD)(MD)No.3161 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(NPD)(MD)No.3161 of 2023

David Selvin Jeyadhas

... Petitioner

Vs

Mary Jacqueline Flora

... Respondent

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 28.08.2023 passed in I.A.No.2 of 2020 in A.S.No.11 of 2013 on the file of learned Principal District Judge, Kanniyakumari at Nagercoil.

For Petitioner : Mr.M.P.Senthil

For Respondent : Mr.T.Selvakumaran



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ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 28.08.2023 passed in I.A.No.2 of 2020 in A.S.No.11 of 2013 on the file of learned Principal District Judge, Kanniyakumari at Nagercoil.

2. The suit in O.S.No.73/11 was filed by this revision petitioner against the respondent herein as a counter suit to the earlier suit in O.S.No.227 of 2008 which was filed by the respondent herein against the revision petitioner before the Principal Subordinate Court, Nagercoil. Both were tried together and by the judgment and decree dated 20.12.2012, the suit filed by the respondent in O.S.No.227 of 2008 was decreed as prayed for and so far as the counter suit filed by this revision petitioner in O.S.No.73 of 2011 was dismissed. Against which an appeal in A.S.No.11 of 2013 was preferred by the revision petitioner before the appellate Court. When the matter was called on 14.08.2018, for arguments, the revision petitioner did not appear. There was no representation on his behalf. So it was dismissed for default. To set



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aside the dismissal order and to restore the appeal suit to file, I.A.No.2 of 2020 was filed by this revision petitioner stating that due to his old age and sickness, he was not in a position to meet his advocate and give instructions for arguing the appeal. So because of that reason, the appeal was dismissed for default.

3. It was resisted by the respondent stating that several chances were given to the revision petitioner and in fact the appeal was dismissed for default on 01.08.2015 to restore that I.A.No.248 of 2018 was filed that was allowed on payment of costs. Thereafter also several chances were given to the revision petitioner, but he did not utilise the same in a proper manner. So finally it was dismissed for default. Similarly I.A.No. 23 of 2016 and 24 of 2016 were filed on the very same ground. Eventhough the first respondent was reported to be sick, there is no other reason assigned for the default committed by the second appellant.

4. Considering the conduct of the revision petitioner, the appellate Court by the impugned order, dismissed the same against which this revision is preferred.



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5. Learned counsel for the respondent by producing the B-Diary extract would contend that as per the order in I.A.No.62 of 2018, as mentioned in the counter affidavit, the appeal was restored to file and posted for arguments. At the request of the appellant counsel, it was posted to 10.07.2018 and then to 25.07.2018 and then to 14.08.2018. On that date, there was no representation for the appellant and so the appeal was dismissed for default. By pointing out this, he was submitting that inspite of the repeated opportunity granted to the revision petitioner, he did not choose to argue the matter. Having failed once, he ought to have been vigilant for the next time. Even in the next time, he committed the very same mistake.

6. Per contra, learned counsel for the revision petitioner would submit that in fact only an appeal ought to have been filed by the revision petitioner. But by mistake the revision has been preferred. But even then, the inconvenience caused to the respondent can be compensated by way of cost. He would further submit that it is a right available to the party to prosecute the matter. That right ought not to have been taken away by the appellate Court by dismissing the application.



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7. No doubt that this is the second lapse committed by the revision petitioner in prosecuting the appeal in proper manner. I am of the considered view that the inconvenience can be compensated by way of cost. By order dated 12.12.2024, the revision petitioner was directed to pay a sum of Rs.5,000/- to the respondent. Cost was paid and that was also received by the respondent.

8. Without going into the other aspect, in view of the above discussion, this Civil Revision Petition is allowed and the order dated 28.08.2023 passed in I.A.No.2 of 2020 in A.S.No.11 of 2013 by the learned Principal District Judge, Kanniyakumari at Nagercoil, is set aside. No costs.

08.01.2025

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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G.ILANGO VAN, J.

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To

- 1.The Principal District Judge, Kanniyakumari at Nagercoil.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

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