



C.R.P(MD)No.3224 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2025

CORAM

**THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.3224 of 2024
and
C.M.P(MD)No.18533 of 2024

Dalmia Cement (Bharath) Limited,
Dalmiapuram,
Lalgudi Village & Post,
Trichy District.

... Petitioner

Vs.

1.A.Murugesan

2.The State of Tamil Nadu,
Represented by District Collector,
Kanyakumari District,
Nagercoil.

3.The Tahsildar,
Thovalai Taluk,
Kanyakumari District.

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order, dated 01.10.2024 passed in I.A.No.13 of 2024 in I.A.No.9 of 2024 in O.S.No.144 of 2022 on the file of the II Additional Sub Court, Nagercoil.



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For Petitioner : Mr.C.Narendren
For R-1 : Mr.S.C.Herold Singh
For R-2 : Mr.B.Saravanan,
Additional Government Pleader

ORDER

The present Civil Revision Petition is filed against the order passed in I.A.No.13 of 2024 in I.A.No.9 of 2024 in O.S.No.144 of 2022 on the file of the II Additional Sub Court, Nagercoil.

2. The revision petitioner is the first defendant in the above suit. The first respondent as plaintiff filed the above suit in O.S.No.144 of 2022 for declaration of title and recovery of possession. Pending suit, the plaintiff filed an application for appointment of Advocate Commissioner and the said application was allowed. Pursuant to the order passed in the said application, the Commissioner inspected the suit property and filed his report. The first respondent / plaintiff herein filed his objections to the said report and plan of the Advocate Commissioner stating that it is bereft of details and therefore, filed an application in I.A.No.9 of 2024 to scrap the report of the Advocate Commissioner. While so, the said



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application was dismissed by the Trial Court for non prosecution. Hence, the revision petitioner was constrained to file an application in I.A.No.13 of 2024 for restoration of the said application in I.A.No.9 of 2024. The Trial Court allowed the said application on payment of cost of Rs.500/-. Since the revision petitioner failed to pay the cost, the said application was dismissed. Aggrieved by this, the present revision is preferred.

3. The learned Counsel appearing for the revision petitioner would submit that though he filed an application under Section 148 of the Civil Procedure Code, 1908 for extension of time, the Trial Court has returned the said application. The learned Counsel for the revision petitioner would submit that the Trial Court ought to have applied the principles laid down by the Hon'ble Apex Court in catena of decisions and the Trial Court ought to have considered the time extension petition. In spite of valid reason stated by the petitioner in the restoration petition, the Trial Court erroneously dismissed the said application.

4. The learned Counsel appearing for the first respondent and the learned Additional Government Pleader appearing for the official



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respondents in one voice stated that no valuable reason stated in the affidavit for allowing the restoration petition and that the Trial Court has rightly dismissed the said application which calls for no interference by this Court.

5. Heard the learned Counsel for the petitioner, the learned Counsel for the first respondent and the learned Additional Government Pleader appearing for the official respondents and perused the materials available on record.

6. In the support affidavit, the submissions made by the learned Counsel for the petitioner is that, since the Counsels for the respondents failed to receive the cost before the cut off date, he was unable to pay the cost. A sufficient cause is shown by the revision petitioner.

7. Since no serious objections was raised on the side of the respondents, this Court thinks it fit in the interest of justice to allow the said revision petition. Accordingly, this civil revision petition stands allowed with a direction, directing the Trial Court to restore the



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restoration application, the application filed to scrap the report of the Advocate Commissioner and dispose on merits and in accordance with law by giving sufficient opportunities to the parties on either side.

8. With these observations, the present revision petition stands disposed of and the Trial Court is also directed to dispose the application within a period of two (2) weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

27.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The II Additional Sub Court,
Nagercoil.



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K.GOVINDARAJAN THILAKAVADI, J.

BTR

Order made in
C.R.P(MD)No.3224 of 2024

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