



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16/2/2015

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

WEB COPY

C.R.P.NPD(MD) Nos.2696 and 2697 of 2014

K. Amirthavalli (died on 19/9/2014)

1. K. Venkatesh Nainar ..Petitioner in both the petitions.
(Cause title accepted vide order dated
5/12/2014 made in M.P.No.1 of 2014
in C.R.P.SR.No.51691 of 2014)

Vs.

1. M. Muhaideen Badhu
2. T. Selvan
3. S. Balagurusamy
4. T. Venkataraman
5. Minor Venkatesh
6. Minor Iswarya

..Respondents in both the petitions.

(Minor respondents 5 and 6 rep.
By father and next guardian -
4th respondent).

Petitions filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 27/8/2014 passed in I.A.Nos.234 and 233 of 2014 in O.S.No.518 of 2012 on the file of the I Additional District Munsif, Tirunelveli.

For petitioners
For respondents

...Mr.S.P.Maharajan
...Mr.P.Nellaiyappan
for R.R.3 to 6.
R.R.1 and 2 - given up.

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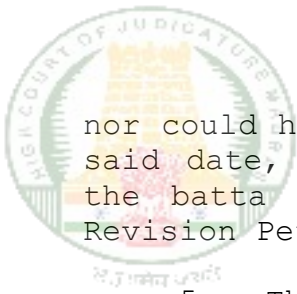
C O M M O N O R D E R

The original plaintiff since deceased is the petitioner in the above Civil Revision Petitions.

2. These Civil Revision Petitions are directed against the order dismissing the petition filed under Section 5 of the Limitation Act to condone the delay in restoring the suit that is dismissed for default and the consequential dismissal order of the petition under Order 9 Rule 9 of the Code of Civil Procedure to restore the petition.

3. The suit was filed on 17/11/2012 on the file of the I Additional District Munsif, Tirunelveli. On the date of first hearing i.e., on 17/12/2012, the second defendant was set ex parte and it was posted for the service of the first defendant. On 11/1/2013, the written statement of the defendants 3 to 6 was also filed and the matter was posted on 8/2/2013 for payment of batta for the first defendant.

4. In the affidavit filed in support of the above petitions, it is stated by the plaintiff that instead of noting the date as '8/2/2013', it was noted as '8/3/2013' by mistake in the diary of her counsel. Therefore, on 8/2/2013, she could not be present in the Court



nor could her counsel be present as the dates were totally wrong. On the said date, the Court dismissed the suit for default for non-payment of the batta for D.1. Aggrieved by the above said orders, these Civil Revision Petitions are filed by the plaintiff/petitioner.

5. The original plaintiff died after the passing of the orders in the above interlocutory applications.

6. The said applications were contested by the defendants 3 to 6 that there was no bona fide in the conduct of the plaintiff and it was deliberately allowed to go for default. The defendants further alleged that there were other suits between the same plaintiff and the other parties in the same Courts and the plaintiff also have been prosecuting those suits even on subsequent dates. Therefore, the plaintiff though aware of the dates and the procedures had deliberately let the suit go for default and filed the application to condone the delay without offering just and sufficient reason.

7. The learned I Additional District Munsif, Tirunelveli, who heard the parties dismissed the applications. As the learned I Additional District Munsif, Tirunelveli felt that the delay was not explained properly and the same was willful. The said orders are under challenge in the revisions.

8. It is contended by the learned counsel for the petitioner that the delay is only 37 days in restoring the suit which was dismissed for default on 8/2/2013. The dismissal is only for want of payment of batta charges for service of summons to the first defendant. According to the learned counsel for the petitioner, the payment of batta charges is the duty of the counsel as the party may not know the Court procedures. It was the counsel on record who ought to have noted the date correctly and also complied with the directions of the Court. The mistake of the counsel has now resulted in the dismissal of the suit.

9. It is also the well settled principle that the mistake of the counsel should not jeo pardise the interest of the client. Even if the suit had to be dismissed for non-payment of batta, the learned I Additional District Munsif, Tirunelveli could have dismissed only against the first defendant, as already the second defendant was set ex parte on 17/12/2012 and the defendants 3 to 6 had filed their written statement as early as 11/1/2013. Therefore, the dismissal of the suit in entirety by the I Additional District Munsif, Tirunelveli is unwarranted.

10. So far as the delay in filing the application is concerned, it has been specifically stated by the plaintiff in the affidavit that she was not well and that she could not immediately file the application. The other reason given by the plaintiff is that she had the knowledge about the same only on 9/3/2013 as the date was noted as 8/3/2013 instead of 8/2/2013. Thereafter, the plaintiff fell sick. Hence she could not meet her counsel immediately to file the application for restoration of the suit. On 19/9/2014, the plaintiff herself is dead. Therefore, it is believable that the plaintiff could have been sick during the relevant period. Besides admittedly, the delay is only 37 days and the suit is dismissed for default on 8/2/2013 which was mistakenly noted as 8/3/2013. Therefore, 30 days period is explained by the plaintiff for having noted



the date wrong. It is only the next 17 days that has to be explained for which she has stated that she was not keeping well.

11. Besides it is the well settled principle that there is no hard and fast rule can be laid down in dealing with the condonation of delay. The Supreme Court has time and again held that a liberal approach should be adopted in condoning the delay for short periods.

12. As stated earlier, it is axiomatic that the condonation of delay is the discretion of the Court. The Court has to be liberal in considering the facts of each case and allow the suit to be tried on merits. In such circumstances, this Court feels one more opportunity may be given to the plaintiff to contest the suit on merits.

13. Accordingly, the order of the I Additional District Munsif, Tirunelveli, dismissing the delay of 37 days is set aside and the delay is condoned.

14. In the result, this Civil Revision Petitions are allowed. No costs. The learned I Additional District Munsif, Tirunelveli is directed to dispose of the suit as expeditiously as possible. The parties are directed to cooperate for the speedy disposal of the suit.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

The I Additional District Munsif, Tirunelveli.

+1CC to M/s.S.P.Maharajan, Advocate in SR.7113

+3CC to M/s.P.Nellaiyappan, Advocate in SR.8731

C.R.P.PD (MD) Nos.2696 and
2697 of 2014
16/2/2015

mvs

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