

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2016

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. No. 4411 of 2014

G.Somasundaram

... Petitioner

... Vs ...

1.Salima Banu

2.R.Selvaraj

... Respondents

Prayer:- Civil Revision Petition filed under Section 115 of the Civil Procedure Code, 1908, to aside the order in I.A.No.1180 of 2011 in O.S.No.338 of 2005 dated 15.06.2012 by the learned District Munsif, Chengalpattu and condone the delay of 1243 days in filing the application to restore the suit No.338 of 2005.

For Petitioner : Mr.V.Vijay Shankar

ORDER

The present Civil Revision Petition is filed seeking to aside the order in I.A.No.1180 of 2011 in O.S.No.338 of 2005 dated 15.06.2012 by the learned District Munsif, Chengalpattu and condone the delay of 1243 days in filing the application to restore the suit in O.S.No.338 of 2005.

2. The case of the petitioner is that the petitioner is the plaintiff in O.S.No.338 of 2005 and the said suit was filed by him against the respondents for specific performance. The respondents/defendants also filed their written statement and the matter has been posted for trial on 28.09.2007, for the examination of P.W.1, namely, the plaintiff. Informing the abovesaid posting of case on 28.09.2007, his counsel sent a letter to the petitioner. But unfortunately, it was not reached. Since the petitioner is suffering from Malaria fever and he was continuously taking treatment for his illness, he could not able to contact his counsel.

3. Later on, when the petitioner has contacted his counsel, he informed him that the suit was posted on 28.09.2007 for the plaintiff's side evidence and due to non-appearance of the petitioner/plaintiff, the suit was dismissed for default. The said fact was known by the petitioner only in the month of March 2011. Immediately, he requested his

counsel and filed the restoration application along with condone delay application in I.A.No.1180 of 2011 in O.S.No.338 of 2005 to condone the delay of 1272 days in filing the application for restoration.

4. Before the Trial Court, in the abovesaid application, no counter affidavit has been filed by the respondents/defendants.

5. When the matter was taken up for hearing on 15.06.2012, the learned District Munsif, Chengalpattu was pleased to dismiss the abovesaid application in I.A.No.1180 of 2011 in O.S.No.338 of 2005 on the ground that the delay is more than 3 years and the reason given by the petitioner that he was suffering from Malaria and bed ridden and he has not received the letter written by his counsel, are not acceptable one. Apart from this, it is the duty of the petitioner/plaintiff to explain the delay satisfactorily and in fact, the petitioner/plaintiff has not been filed Medical Certificate or any evidence let in to prove the prolong illness of 3 years for Malaria fever. Challenging the same, the present civil revision petition has been filed.

5. Heard Mr.V.Vijay Shankar learned counsel for the petitioner. No representation for the respondents.

6. Admittedly, the said suit was filed for specific performance. When the matter was posted on 28.09.2007, the petitioner/plaintiff was not appeared before the Court. Therefore, the said suit was dismissed for default. Thereafter, the petitioner/plaintiff filed the application to condone the delay of 1272 days in filing the application for restoration. But the reason given by the petitioner/plaintiff for the delay is not satisfactory one.

7. Admittedly, the suit was filed for specific performance and for purchasing the suit property, the petitioner paid a sum of Rs.10,000/- as advance and fix the entire sale consideration of Rs.50,000/-.

8. In the interest of justice, for giving an opportunity to the petitioner/plaintiff to prove his case, it is necessary to allow this civil revision petition on a condition that the petitioner/plaintiff shall deposit a sum of Rs.5,000/- to the Tamil Nadu State Legal Services Authority, Chennai, within a period of four weeks from the date of receipt of a copy of this order.

9. Accordingly, this Court is inclined to pass the following orders:-

- (a) the order dated 15.06.2012 made in I.A.No.1180 of 2011 in O.S.No.338 of 2005 on the file of the District Munsif, Chengalpattu, is set aside by allowing this Civil Revision Petition on

condition that the petitioner/plaintiff shall pay a sum of Rs.5000/- (Rupees Five Thousand only) to the Tamil Nadu State Legal Services Authority, Chennai, within a period of four weeks from the date of receipt of a copy of this order.

(b) the learned District Munsif, Chengalpattu, is hereby directed to number the restoration application and pass orders within a period of one month from the date of receipt of a copy of this order by giving opportunity to both the parties.

(c) After passing the order in the restoration application, the learned District Munsif, Chengalpattu is directed to dispose of the suit in O.S.No.338 of 2005 within a period of three months on day today basis without giving any adjournment. Both parties are hereby directed to give fullest co-operation for the early disposal of the suit in O.S.No.338 of 2005.

Accordingly, this Civil Revision Petition is ordered. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

skn

To

The District Munsif,
Chengalpattu.

सत्यमेव जयते

C.R.P. No. 4411 of 2014

KSJ(CO)
CA(18/10/2016)

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