

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.11.2016

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THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

**C.R.P.(NPD)No.3431 of 2016 &
C.M.P.No.17425 of 2016**

1. K.Somasundaram
2. Jayanthi

... Petitioners

..VS...

Madhaiyan

..Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 24.06.2016 made in I.A.No.921 of 2015 in O.S.No.201 of 2012 on the file of the District Munsif Court, Sankari.

For Petitioners : Mr.C.Munusamy

ORDER

Challenging the fair and final order dated 24.06.2016 passed in I.A.No.921 of 2015 in O.S.No.201 of 2012 on the file of the District Munsif Court, Sankari, the defendants have filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.201 of 2012 for declaration

and permanent injunction. The defendants filed their written statement and contesting the suit. Thereafter, when the suit was posted for trial on 07.02.2014, since the plaintiff failed to appear before the trial Court, the suit was dismissed for non prosecution. Thereafter, an application was filed by the plaintiff to condone the delay of 200 days in filing the application to restore the suit, which was dismissed for default on 07.02.2014. In the affidavit filed in support of the petition, the plaintiff has stated that he was suffering from blood pressure and that on 05.04.2014, he fell down and broken his color bone. Further, he has stated that he was taking treatment in Vinayaga Hospital for the injuries sustained by him. That apart, the plaintiff has also stated that due to high blood pressure, he was suffering from giddiness frequently. The defendants filed their written statement disputing the averments stated in the application. In order to establish the case of the plaintiff, he has produced Exs.P1 to P5 – medical records pertaining the treatment undergone by him. Taking into consideration the documents produced by the plaintiff, the trial Court condoned the delay of 200 days in filing the application to restore the suit on condition the plaintiff paying a sum of Rs.2,000/- to the defendants.

3. The learned counsel appearing for the petitioner submitted that

since the defendants refused to receive the cost awarded by the trial Court, the plaintiff had deposited the same to the credit of the suit.

4. Since the plaintiff has satisfactorily explained the reasons for the delay in the affidavit filed in support of the application in I.A.No.921 of 2015 to uphold especially the contentions raised in the affidavit by producing the medical records before the trial Court, the trial Court has rightly condoned the delay. I do not find any error or irregularity in the order passed by the trial Court. Hence, the Civil Revision Petition is devoid of merits and the same is dismissed.

5. Since the suit is pending from 2012, I direct the District Munsif, Sankari, to dispose of the suit in O.S.No.201 of 2012, on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order. It is open to the defendants to file appropriate application for withdrawal of the cost amount of Rs.2,000/- deposited by the plaintiff to the credit of O.S.No.201 of 2012.

No costs. Connected miscellaneous petition is also dismissed.

07.11.2016

rg
To
The District Munsif, Sankari

M. DURAISWAMY,J.,
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