

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.07.2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.965 of 2016
and
CMP No.5402 of 2016

Samiyathal

.... Petitioner

vs

Rangan (died)

1. Annadurai
2. Palanisamy
3. Chinnaponnan
4. Savithiri Rajan
5. Sivakami Bannari

.... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the Order dated 02.11.2015 passed in I.A.No.965 of 2010 in O.S.No.1602 of 1994 on the file of Principal Subordinate Court, Coimbatore.

For Petitioner : Mr.Shivakumar

For respondent : Mr.C. Veeraraghavan

ORDER

Challenging the fair and final order passed in I.A.No.965 of 2010 in O.S.No.1602 of 1994 on the file of Principal Subordinate Court, Coimbatore, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff filed a suit in O.S.No.1602 of 1994 for Specific Performance. The defendants were contesting the suit before the trial Court. Subsequently, since the plaintiff failed to appear before the trial court, the trial Court dismissed the suit for non-prosecution on 05.09.2000. Thereafter, the plaintiff filed an application in I.A.No.965/2010 to condone the delay of 3702 days in filing the petition to restore the suit.

3. In the affidavit, filed in support of the petition, the petitioner has stated that her husband was taking treatment for Cancer and she was attending to him. Therefore, she was not in a position to file an application before the trial Court in time to restore the suit, which was dismissed for non-prosecution on 05.09.2000.

4. Apart from saying that she was taking care of her husband, further she has stated that her counsel had informed her about the

dismissal of the suit only in the year 2009 and hence she had filed the application in the year 2010 to condone the delay of 3702 days in filing the petition to restore the suit.

5. The conduct of the party would clearly establish that she is not diligent in prosecuting the matter in a proper manner. The application to restore the suit was filed after a lapse of ten years. This would establish that the plaintiff is not diligent in prosecuting the matter in a proper manner.

6. It is a settled position that the petitioner, seeking for condonation of delay, should give sufficient cause for condoning the delay. In the absence of sufficient cause shown by the party, the delay cannot be condoned.

7. The learned counsel for the petitioner, in support of his contention, relied upon the judgment reported in **1998 (7) SCC 123 (N. Balakrishnan vs M. Krishnamurthy)**, wherein, the Hon'ble Supreme Court held that in the case of the petitioner showing sufficient cause, the delay can be condoned. In the said case, the Hon'ble Supreme Court condoned the delay of 883 days in approaching

the Court against the dismissal of his application to set side the exparte decree.

8. Since the plaintiff has not given any acceptable reason for condoning the inordinate delay of more than ten years, the trial Court rightly dismissed the application, In these circumstances, the judgment relied upon by the learned counsel for the petitioner, does not apply to the facts and circumstances of the present case.

9. Therefore, I do not find any error or irregularity in the order passed by the trial court. Hence the Civil Revision Petition is liable to be dismissed as devoid of merits. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected MP is closed.

11-07-2016

sr

Index:no
website:yes

To
The VII Judge, Small Causes Court, Chennai

M. DURAISWAMY,J.,

sr

C.R.P.(NPD)No.965 of 2016

11-07-2016