



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2016

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P. (MD) No. 2101 of 2016

and

C.M.P. (MD) No. 9809 of 2016

Ayeesha Bibi

.. Petitioner/Petitioner/Plaintiff

Vs.

1. Ramesh
2. Chandramouli
3. Vijayakumari
4. Rajasekaran
5. Saroja
6. Mathivanan

.. Respondents/ Respondents/
Defendants

PRAYER: Petition is filed under Section 115 of C.P.C., aggrieved by the order dated 27.03.2012 made in I.A.No.964 of 2010 in O.S.No.508 of 2000 on the file of the Principal District Munsif Court, Trichy.

For Petitioner : Mr.R.Devaraj
For R-5 : Mr.S.Ramesh
for Mr.V.Raghavachari

O R D E R

Aggrieved over the order passed by the learned Principal District Munsif, Trichy, in I.A.No.964 of 2010 in O.S.No.508 of 2000, dated 27.03.2012, this Civil Revision petition has been filed.

2. The Revision petitioner has filed the suit in O.S.No.508 of 2000 on the file of the Court below, for permanent injunction restraining the defendants/respondents from interfering in the plaintiff's peaceful possession and enjoyment over the suit property. The written statement has been filed by the sixth defendant. Thereafter, the aforesaid suit was taken up for trial before the Court below. On 16.11.2007, the aforesaid suit was dismissed for default, for the non-appearance of the petitioner/plaintiff.

3. According to the petitioner, she has two sons and a daughter and her sons were married and employed in foreign countries. They have made intermittent visits for a short



period and they were not in a position to concentrate in the litigation. Hence, the entire proceedings were looked after by the young brother of her deceased husband. The petitioner was a Pardanishan lady and she also lacks support and she was also sick. After her sons came to India and enquired about the status of the present proceedings of the suit, she handed over the entire file and directed them to take care of litigation directly. On verification of the records from the petitioner's counsel, they came to know that the suit was dismissed for default on 16.11.2007 itself. Therefore, the petitioner has filed the aforesaid application to condone the delay of 969 days in filing the application to restore the suit, which was dismissed for default, on 16.11.2007. The respondents have filed counter affidavit, denying the averments made in the petition. After considering the submissions of the Revision petitioner as well as the respondents, the Court below has erroneously dismissed that application. Therefore, the Revision petitioner has filed the present Civil Revision petition before this Court.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the fifth respondent and perused the records.

5. It is an admitted fact that the petitioner filed the suit in O.S.No.508 of 2000 seeking permanent injunction against the defendants/respondents and the same was dismissed on 16.11.2007 for non-prosecution. Thereafter, the petitioner came to know about the dismissal of the said suit and filed the aforesaid application in I.A.No.964 of 2010, praying to condone the delay of 969 days in filing the application to set aside the dismissal order passed by the Court below.

6. On perusal of the affidavit would show that the petitioner has not given any reason and not furnished the particulars for the inordinate delay in 969 days in filing the application to set aside the dismissal order passed by the Court below. The petitioner has also not produced oral and documentary evidence before the Court below. The petitioner has to establish the reasons, bonafidely, for the said delay. In the decision in 2015 (1) SCC 680, (H.Dohil Constructions Company (P) Ltd., V. Nahar Exports Ltd., the Hon'ble Supreme Court has observed as follows:-

"When we apply those principles of Bhattacharjee case, Esha Bhattacharjee V. Raghunathpur Nafar Academy, (2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713: (2014) 4 SCC (Cri) 450: (2014) 2 SCC (L&S) 595, to the case on hand, it has to be stated that the failure of the respondents in not showing due diligence in filing



of the appeals and the enormous time taken in the re-filing can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for re-filing, the non-furnishing of satisfactory reasons for not re-filing of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 6.9.2007, the reasons which prevented the respondents from not paying the Court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bona fides in its approach. It also requires to be stated that in the case on hand, not re-filing the appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, Courts are required to weigh the scale of balance of justice in respect of both the parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to re-filing. The filing of an application for condoning the delay of 1727 days in the matter of re-filing without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the Court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial Court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered."

In the light of the said Judgment of the Hon'ble Supreme Court, the petitioner has to explain the inordinate delay of 969 days in filing the petition to set aside the dismissal order passed by the Court below. But, the petitioner has not given any reason and not furnished the particulars for the inordinate delay in filing the application to set aside the dismissal order passed by the Court below.



7.Hence, the Civil Revision petition fails and the same is, accordingly, dismissed. No costs. Consequently, connected Miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(CS II)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif Court, Trichy.

+1cc to Mr.R.Devaraj, Advocate in SR No.61501

+1cc to Mr.V.Raghavachari, Advocate in SR No.61627

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