



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.2478 & 2479 of 2016 (PD)

and

C.M.P (MD) No.11694 of 2016

C.R.P. (MD) No.2478 of 2016

S.Chandra

.. Petitioner/1stRespondent/
Petitioner/Plaintiff

Vs.

1.Er.R.Chinthathirai Arockiam Selvin ..Respondent/Petitioner/
2ndRespondent/
2ndDefendant2.The Commissioner,
Corporation of Thoothukudi,
Thoothukudi 628 002...Respondent/2nd Respondent/
1st Respondent/
1st Defendant

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to allow the Civil Revision Petition and set aside the order and decretal order passed in I.A.No.404 of 2016 in I.A.No.1427 of 2015 in O.S.No.213 of 2011, dated 18.08.2016, on the file of the Principal District Munsif Court, Thoothukudi.

For Petitioner : Mr.C.Godwin

C.R.P. (MD) No.2479 of 2016

S.Chandra

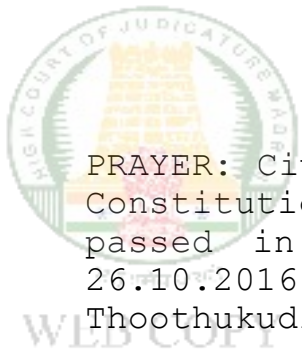
.. Petitioner/Petitioner/Plaintiff

Vs.

1.The Commissioner
Thoothukudi Corporation,
Thoothukudi.<https://hcservices.ecourts.gov.in/hcservices/>

2.Arockiam Selvin

..Respondents/Respondents/Defendants



PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the order and decretal order passed in I.A.No.1427 of 2015, in O.S.No.213 of 2011, dated 26.10.2016, on the file of the Principal District Munsif Court, Thoothukudi.

For Petitioner : Mr.C.Godwin

ORDER

The issue involved in both the CRPs are interlinked and hence, both CRPs are disposed of by common order.

2.The petitioner is the plaintiff in O.S.No.213 of 2011. Pending suit, the second respondent filed I.A.No.1127 of 2012 for amendment of address of the petitioner/plaintiff as well as the second respondent/second defendant. The said I.A., was posted to 15.04.2013 for filing counter by the petitioner finally. No counter was filed on that day. Therefore, the said I.A.No.1127 of 2012 was allowed on 15.04.2013. The petitioner did not carry out the amendment and did not file amended copy of the plaint. Therefore, the suit was dismissed for default on 12.07.2013. The petitioner filed application to restore the suit on 12.08.2013. The said application was returned on 14.08.2013. The said petition was not re-presented after rectifying the defects pointed out.

3.According to the petitioner, she contacted her Advocate in November, 2015 and came to know that the Advocate Clerk, to whom case was entrusted, took the case bundle in the year 2013 itself and subsequently, he died. The petitioner enquired with family members of the Advocate clerk and came to know about the return of the petition to restore the suit in O.S.No.213 of 2011. Then immediately, she filed I.A.No.1427 of 2015 for condonation of delay of 576 days in re-presenting the petition to restore the suit. In the petition, according to the second respondent notice was sent to old address and not to the amended address, therefore, the second respondent could not appear and file counter. In view of the same, I.A.No.1427 of 2011 was allowed on 16.11.2015. On coming to know, the second respondent filed I.A.No.404 of 2016 to set aside the ex-parte order, dated 16.11.2015. The said I.A., was ordered by the order, dated 18.08.2016 holding that the notice was not sent to the amended address of the second respondent. Against the said order passed in I.A.No.404 of 2016, the petitioner has come out with the present Civil Revision Petition in C.R.P.No.2478 of 2016.

4.After the order, dated 18.08.2016 passed in I.A.No.404 of 2016, the petitioner filed I.A.No.1427 of 2015 was taken up for hearing. The second respondent filed counter and opposed the same. The learned Principal District Munsif, Thoothukudi considered the averments



made in the affidavit and counter affidavit and by the order, dated 26.10.2016, dismissed the I.A.No.1427 of 2015. Against the said order of dismissal, the petitioner has come out with the present C.R.P. (MD) No.2479 of 2016.

5. The learned counsel for the petitioner submitted that the court below ought to have dismissed the I.A.No.404 of 2016 as second respondent has not given any reason for his non-appearance on 16.11.2015. The court below failed to see that the petitioner has given valid reason for delay in re-presenting the petition for restoration of the suit. The court below ought to have seen that the Advocate clerk, who was handling the matter, died during November, 2014 and due to that reason only, the petition was not re-presented in time. The petitioner was depending on a clerk, which was a mistake. She ought to have contacted her Advocate. The petitioner could not be penalized for her mistake. Court below failed to see the delay only in re-presenting the petition to restore the suit and prayed for allowing both C.R.Ps.,

6. From the records, it is seen that the first respondent in C.R.P.No.2478 of 2016 has given valid reason for his non-appearance on 16.11.2015, without serving notice ex-parte order was passed in I.A.No.1427 of 2015. The contention of the first respondent that the petitioner served notice to the wrong address, was not disputed by the petitioner. Therefore, the learned judge has rightly allowed the said application. The petitioner has not made out any case for setting aside the said order.

7. The petitioner has stated that the Advocate Clerk, whom she engaged, was handling the matter and subsequently, he died. After engaging the Advocate, she has not given any reason for engaging the Advocate clerk and for any reason not contacting the Advocate for two years. I.A.No.1127 of 2012 filed by the second respondent was allowed on 12.07.2013. The petitioner has not challenged the said order. Therefore, the said order has become final. In the petition to condone the delay in re-presenting, she has stated that by amendment of address of the second respondent, nature of the suit would be changed. From this, it is clear that she is not willing even now to carry out the amendment.

8. The petitioner has not given any valid or acceptable reason for condoning the delay of 576 days in re-presenting the application to restore the suit. Further, the petitioner has not given any reason for not filing counter on 15.04.2013 in I.A.No.1127 of 2012 or for not filing the amended copy of the plaint. The length of the delay is not a criteria, but party must give valid and sufficient reason to condone the delay. The intention of the party must be bonafide and not malafide, but in the present case, it is seen that the petitioner has not explained and given reason to condone the delay in re-representation.



9. The learned Judge has considered this aspect in proper perspective and exercised his jurisdiction properly and there is no illegality or irregularity in the order warranting interference by this Court.

10. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To
The Principal District Munsif Court, Thoothukudi.

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C.R.P (MD) Nos. 2478 and 2479 of 2016 (PD)
05.12.2016