

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **17.04.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) Nos.2558 and 2559/2014

Muniammal : Petitioner

versus

1.V.Chandran

2.B.Gopi : Respondents

PRAYER: Revision petitions filed against the order dated 1.7.2013, in I.A.Nos.433 and 434 of 2011 in O.S.No.55 of 2002 on the file of the Subordinate Judge, Tiruvallur.

For petitioner :: Mr.K.Ramanatha Reddy

For respondents :: Mr.R.Selvakumar, for R-1
Mr.T.Srikrishna Bhagavat, for R-2

COMMON ORDER

The application filed by the petitioner under Section 5 of the Limitation Act to condone the delay of 581 days to set aside the exparte decree was dismissed by the Trial Court on the ground that she failed to produce documents indicating that she preferred a complaint before the Bar Council of Tamil Nadu against her erstwhile lawyer and that there was no evidence to prove her illness. The learned Trial Judge has given another reason that the counsel who filed the petition under Section 5 was not armed with a vakalat. Feeling aggrieved by the order dated 1 July 2013, in I.A.Nos.433 and 434 of 2011, the unsuccessful petitioner is before

this Court.

2. Heard the learned counsel for the petitioner and the learned counsel for the first respondent.

3. The first respondent filed a suit in O.S.No.55 of 2002 for specific performance. The Trial Court granted a decree primarily on the ground that the petitioner failed to appear in spite of receiving notice. The petitioner filed an application to set aside the exparte decree along with an interlocutory application in I.A.No.433 of 2011 to condone the delay of 581 days. Before the Subordinate Judge, the petitioner contended that her earlier counsel colluded with the first respondent and as such, she was not given information with regard to the progress of the case. According to the petitioner, she preferred a complaint before the Bar Council of Tamil Nadu against her lawyer. The petitioner further contended that she was bedridden and the same stood in the way of filing the application within the statutory period to set aside the exparte decree.

4. The learned Trial Judge entertained the application filed by the petitioner in I.A.No.433 of 2011 through Advocate Thiru.A.Dayalan. The learned Subordinate Judge while dismissing the application invented a reason that vakalat of Thiru.A.Dayalan was not registered and as such, there is a procedural lacuna. In case the learned Trial Judge was of the view that the vakalat of the counsel was not registered, proper course

available to the learned Trial Judge was to return the application for rectification. The learned Trial Judge was not correct in her observation that there is a procedural lacuna on account of the unregistered vakalat after entertaining the application for condonation on merits. The Court cannot take the parties for a ride. In case the Court is of the view that there was a procedural lacuna, the said defect ought to have been rectified at the initial stage. I am therefore of the view that the Trial Court was not correct in observing that the vakalat of Thiru.A.Dayalan was not registered and as such, there is a serious procedural lacuna in the subject case.

5. The other reason given by the learned Trial Judge that the petitioner failed to produce proof regarding initiation of complaint before the Bar Council of Tamil Nadu is only to be rejected. The initiation of complaint before the Bar Council is added only to show that the counsel failed to inform the petitioner about the progress of the case. Therefore, there was no necessity to produce the proceedings initiated by the petitioner against the erstwhile counsel before the Bar council of Tamil Nadu. The learned Trial Judge observed that there was no evidence to show the illness. The petitioner is aged about 72 years. The petitioner in her affidavit contended that she was suffering from number of body ailments due to old age. The learned Trial Judge wanted the petitioner to produce documentary evidence to show her illness.

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6. After hearing the learned counsel for the parties and on a perusal of the documents available on record I consider it deem and fit to remit the matter to the Trial Court for fresh consideration.

7. In the result, the order dated 1 July 2013 is set aside. The applications in I.A.Nos.433 and 434 of 2011 are restored to file. The petitioner is given liberty to produce documents before the Trial Court to substantiate her contentions regarding delay. In short, it is open to the petitioner to file a better affidavit indicating the reasons for the delay.

8. The learned Subordinate Judge, Tiruvallur, is directed to consider the matter afresh and pass orders on merits. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

9. The civil revision petition is allowed as indicated above. No costs.

17.04.2017

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To
The Subordinate Judge, Tiruvallur.

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