

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.05.2017

CORAM

THE HONOURABLE Mr. JUSTICE D.KRISHNAKUMAR

C.R.P.[NPD] No.1273 of 2015

G.Elanthan

... Petitioner

Vs

Sathybabama

... Respondents

Civil Revision Petition filed under Section 115 of C.P.C. to set aside the order dated 22.01.2015 passed in I.A.No.282 of 2014 in O.S.No.102 of 2005 on the file of the District Munsif Court, Chengalput.

For Petitioner : Mr.A.Ilayaperumal
For Respondent : No appearance

ORDER

The petitioner, who is the plaintiff in O.S.No.120 of 2005 on the file of the District Munsif Court, Chengalput has filed the present Civil Revision Petition to set aside the order dated 22.01.2015 passed in I.A.No.282 of 2014 in O.S.No.102 of 2005.

2. The brief facts of the case is as follows :

The petitioner has filed a suit in O.S.No.102 of 2005 seeking permanent injunction against the respondent. In the aforesaid suit, the dispute is with regard to the encroachment of 242 sq.ft. in C-schedule property. The petitioner has filed an application to appoint an Advocate Commissioner and the same was allowed and the suit was posted for trial on 13.09.2010. Due to heart attack, the petitioner was admitted in the Government General Hospital, Chennai. Subsequently, the suit was adjourned to 20.09.2010. Due to non appearance of the petitioner, the suit was dismissed for default on 20.09.2010. According to the petitioner, he was in continuous treatment for heart ailment and therefore, he could not contact the counsel to take steps to file an appropriate application. After recovery from his ailment, the petitioner has approached the Advocate and filed an application in I.A.No.282 of 2014 to condone the delay of 1188 days in filing the restoration petition to set aside the dismissal order dated 20.09.2010. The trial Court has dismissed the aforesaid I.A.No.282 of 2014 on 22.01.2015. Against the said dismissal, the petitioner has filed the present petition before this court.

3. Learned counsel appearing for the petitioner would submit that the petitioner was suffering from heart ailment from the month of September 2010 and he could not contact the counsel. After recovery from the said illness, he contacted the counsel and the application in I.A.No.282 of 2014 has been filed before the Court below under Section 5 of the Limitation Act, 1963, to set aside

the dismissal order. Learned counsel for the petitioner would further submit that certain medical records were misplaced, at the time of filing I.A.No.282 of 2014 and the said medical records are now available and the same are filed before this Court to prove his case. The dispute between the petitioner and the respondent is only in respect of C-schedule property for an extent of 242 sq.ft. Even in the written statement, the respondent/defendant has stated that the defendant is taking steps for the execution of sale deed in respect of the property, for which the plaintiff has received the sale price.

4. In the light of the facts and the relief prayed in the suit, learned counsel for the petitioner would submit that an opportunity may be granted to the petitioner to prove the reasons, as stated in the affidavit before the Court below, otherwise the petitioner would be put to irreparable loss and the same could not be compensated.

5. At the time of admission, learned counsel appearing for the petitioner is permitted to take notice through court as well as privately and the private notice was served on the respondent on 30.03.2015. But, there is no representation on behalf of the respondent.

6. From the perusal of records, it is seen that the petitioner was admitted

in the Government General Hospital, Chennai, due to heart attack for treatment. The said suit was posted for trial on 20.09.2010. But, on that day, the petitioner was not in a position to attend the trial. Therefore, the suit was dismissed for default on 20.09.2010.

7. On perusal of the affidavit filed by the petitioner, in which, the petitioner submitted that the petitioner is undergoing treatment for his heart ailment, for three years and therefore, he was not in a position to attend the court on the hearing date. Subsequently, the petitioner met the counsel and filed an application in I.A.No.282 of 2014 to set aside the dismissal order dated 20.09.2010. The said I.A.No.282 of 2014 was dismissed stating that the petitioner has not produced any documents before the Court below, to prove the reasons stated in the affidavit. But, the petitioner has filed the medical records before this Court along with the typed set of papers in the present Civil Revision Petition. Learned counsel for the petitioner would submit that the said documents were not produced by the petitioner before the Court below, for the reason that the said documents were misplaced at the time of filing I.A.No.282 of 2014.

8. By considering the relief prayed for and the reasons stated in the memorandum of grounds in the present revision petition, this Court is of the view that the petitioner shall be granted an opportunity to prove the reasons

stated in the affidavit and therefore, the order passed by the Court below in I.A.No.282 of 2014 dated 22.01.2015 is set aside, on payment of cost of Rs.10,000/- [Rupees Ten Thousand Only] to the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras to be paid by the petitioner within a period of four weeks from the date of receipt of a copy of this order and the matter is remitted back to the trial Court to consider afresh. On compliance of the said conditional order, thereafter the petitioner is permitted to file the documents i.e., the medical records of the petitioner before the Court below within a period of six weeks. Thereafter, the Court below is directed to pass appropriate orders in the aforesaid I.A.No.282 of 2014 in accordance with law, after providing opportunity to all the parties concerned.

9. With the above direction, the Civil Revision Petition is allowed.

10. Post the matter "for reporting compliance" on 19.06.2017.

15.05.2017

Index: Yes/No

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To

The District Munsif, Chengalput.

D.KRISHNAKUMAR, J.

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