

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.03.2017**

CORAM:

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

C.R.P.(N.P.D.) No. 2968 of 2013

Duraisamy

...Petitioner

Vs

P.Velayutham (Died)
Kumaresan

...Respondent

Prayer:- Civil Revision Petition filed under Section 115 of Civil Procedure Code as against the fair and decreetal order dated 12.04.2013 made in I.A.No.67 of 2013 in O.S.No.339 of 2005 on the file of Principal District Munsif Court at Tiruchengode.

For Petitioner : Mr.T.L.Thirumalaisamy
For Respondent : Mr.N.Manokaran

ORDER

The civil revision petition is directed against the order dated 12 April 2013 dismissing the application in I.A.No.67 of 2013 in O.S.No.339 of 2005 filed under Section 5 of the Limitation Act, to condone the delay of 1141 days in filing the petition under Order 22 Rule 4 of CPC.

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

3. The petitioner filed a suit for specific performance before the trial Court, on the strength of an agreement alleged to have been executed by the first defendant in the suit. The suit was initially decreed as prayed for. Subsequently, at the instance of the respondent, *ex parte* decree was set aside and the suit was restored to file.

4. During the currency of the suit, the first defendant died. The petitioner filed interlocutory application in I.A.No.67 of 2013 to condone the delay of 1141 days in filing the petition to bring on record the legal representatives. The trial Court dismissed the interlocutory application, primarily on the ground that each days delay has not been explained. Feeling aggrieved, the unsuccessful petitioner in I.A.No.67 of 2013 is before this Court.

5. The trial Court while dismissing the application to condone the delay, omitted to take into account the fundamental aspect that one of the legal heirs has already been on record. The suit was filed against the father and the son. The son represents father. The estate was represented by the second defendant in the suit.

6. The only technical defect is the non impleading of the daughter of the first defendant. Since the estate has already been represented by the

son, the trial Court ought to have taken the issue leniently. I am therefore, of the view that the impugned order is liable to be set aside.

7. In the result, the order dated 12 April 2013 is set aside subject to the condition that the petitioner shall pay a sum of Rs.10,000/- [Rupees ten thousand only] by way of costs to the respondent. The cost amount shall be paid within a period of four weeks from today, failing which the application in I.A.No.67 of 2013 shall stand dismissed automatically without any further reference to this Court.

The civil revision petition is allowed subject to the condition regarding payment of costs.

28.03.2017

Gms

To

Principal District Munsif Court,
Tiruchengode.

K.K.SASIDHARAN,J.

Gms

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