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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.06.2017

(Reserved on 06.06.2017)

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (NPD) (MD) No.37 of 2015

Saranya

... Petitioner/ Petitioner
Defendant

vs.

Thavamani

... Respondent/Respondent
Plaintiff

Petition filed under Section 115 of the Civil Procedure Code against the order passed by the District Munsif cum Judicial Magistrate Court, Vadipatti, in I.A.No.158/2014 in O.S.No.303/2008 dated 22.09.2014.

For Petitioner : Mr.D.Ghandiraj
For Respondent : Mr.S.Chandrasekaran

ORDER

This revision petition is filed by the plaintiff challenging the dismissal of the application to condone the delay of 498 days in filing the application to restore her suit which was dismissed for default.

2.The brief facts of the case are that the revision petitioner has filed suit for delivery of possession and future mesne profit in respect of the suit property. She claims that she is the absolute and exclusive owner of the suit schedule property which she has inherited after the death of her mother on 21.11.2002. The respondent herein/defendant who has encroached upon the suit schedule property is liable to vacate and deliver possession of the suit schedule property. The encroachment by the defendant has come to the knowledge of the plaintiff on her attaining majority on 25.07.2006 and therefore, the alleged agreement of sale executed by the mother of the plaintiff while the plaintiff was minor is not genuine and legal.

3.When the matter was taken up for trial, the revision petitioner herein has failed to turn up and submit herself for



cross examination. Hence, the suit was dismissed for default on 18.09.2012. By that time according to the revision petitioner, she got married and settled at Erode along with her husband and gave delivery to a male child on 16.06.2012. Only thereafter, she enquired about the case with the counsel and came to know about the dismissal of the suit for default and hence, stating the abovesaid reason, she filed an application to restore the suit along with an application to condone the delay of 498 days in filing the restoration application.

4.The Trial Court has dismissed the application on the ground that the petitioner has not explained the delay of 1½ years with proper explanation, hence, the application to condone the delay of 498 days does not deserve any merit.

5.The present revision petition is filed against the said order on the ground that the Trial Court has failed to consider the fact that the petitioner was regularly attending the Court till 25.01.2011. Since she had an affair with a person whom she later married on 05.06.2011, she had a disturbed life and could not follow the case properly. After marriage, she settled down at Erode about 200 kms away from Madurai hence, she was able to attend the Court. Only after the child birth and when she came to know about the dismissal of the suit for default, she has immediately filed an application to set aside the order of dismissal with the delay of 498 days.

6.The Trial Court without taking note of the genuine explanation given for the delay has taken a pedantic approach and held that 1½ years delay has not been explained adequately. Since the suit is filed by the revision petitioner for recovery of possession, there is no necessity for her to protract the proceedings. She has already filed a proof affidavit in lieu of chief examination and was attending the Court for being cross examined by the defendant. The defendant did not cross examine the revision petitioner for several hearings and when there was some disturbance in the domestic life of the revision petitioner, her absence has been taken advantage by the defendant and the suit is now been dismissed depriving the right of the revision petitioner over the suit property.

7.The learned counsel for the respondent submitted that having filed the suit for recovery of possession with frivolous contentions, the revision petitioner stayed away from subjecting herself for cross examination in spite of several adjournments. Only after giving adequate opportunity, the Trial Court has dismissed the suit and the Trial Court while rejecting the condone delay application has narrated the sequence of dates and events which disentitle the petitioner from seeking condonation of 498 days delay in filing the petition for restoring the suit.



8. Perusal of the impugned order indicates that the revision petitioner has filed her proof affidavit on 25.01.2011 and the case has been adjourned for cross examination of PW1 subsequently on several occasions. At last on 15.03.2012, when the defendant sought further time to cross examine PW1, the Court has closed the plaintiff side evidence and has posted the suit for examination of defendant side witnesses. At that juncture, the defendant filed an application to recall PW1 for cross examining her. That application was allowed on 04.06.2012. The revision petitioner who was examined as PW1 was not able to submit herself for cross-examination. So, the case has been adjourned on various dates between 12.06.2012 to 18.09.2012. At last, for her non appearance, the suit has been dismissed on 18.09.2012.

9. The learned Trial Court has also taken note of the earlier dismissal of the suit on 18.12.2009 for default since the plaintiff failed to turn up and give evidence. However, the suit was restored subsequently vide order passed in I.A.No.135/2010. In the said factual scenario, it could be seen that after filing her proof affidavit, the revision petitioner has not attended the Court for subjecting herself for cross examination. Her side evidence was closed and when the matter was posted for examination of defendant side witnesses, the defendant without examining the witnesses on his side has filed an application to recall PW1 for cross examination and the same has been allowed on 04.06.2012. The pleadings reveal that on 16.06.2012, the revision petitioner has given birth to a male child and in view of her post natal convalesce, she was not in a position to attend her litigation.

10. This Court is convinced that there was genuine reason and justification for not attending the Court during the period when the suit was dismissed for default. To meet the ends of justice, it is just and necessary to condone the delay of 498 days and give an opportunity to the revision petitioner to contest the case on merits.

11. Accordingly, this Civil Revision Petition is allowed. The order dated 22.09.2014 passed by the District Munsif cum Judicial Magistrate Court, Vadipatti, in I.A.No.158/2014 in O.S.No.303/2008 is set aside. The Trial Court is directed to take up the application to restore the suit and pass appropriate order. No costs.

Sd/-

Assistant Registrar)(Crl Side)

/True Copy/



To

The District Munsif cum Judicial Magistrate Court,
Vadipatti.

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+1cc to Mr.S.Chandrasekaran, Advocate Sr.No.59585

+1cc to Mr.D.Ghandiraj, Advocate Sr.No.59319

NBI

VB/MR/SAR1/16.06.2017/4P/4C

order made in
CRP (PD) (MD) No.37 of 2015
08.06.2017