



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD)No.180 of 2017 (NPD)

V.Buvaneswari

...Petitioner/Petitioner/Plaintiff

Vs.

K.Balakrishnan

..Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed, under Article 115 of the Code of Civil Procedure, to allow this Civil Revision Petition and set aside the order, dated 17.06.2016 in I.A.No.389 of 2014 in OS.No.595 of 2004, passed by District Munsif Court Thirumangalam.

For Petitioner : M/S.A.Saravanan

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order, dated 17.06.2016 in I.A.No.389 of 2014 in OS.No.595 of 2004, passed by the learned District Munsif , Thirumangalam.

2.The petitioner is the plaintiff. The respondent is the defendant. The petitioner filed suit in O.S.No.595 of 2004 before the District Munsif Court, Thirumangalam for declaration and other reliefs. The said suit was posted on 23.06.2009. On that day, the petitioner did not appear and therefore, the suit was dismissed for default. The petitioner filed I.A.No.389 of 2014 to condone the delay of 1700 days in filing the petition to restore the suit. According to the petitioner, she was out of station for her studies and due to that, she could not contact her Advocate and appear before the Court. The father of the petitioner was looking after the case and subsequently, he died. Only thereafter, she came to the Village and enquired the stage of the suit and thereafter, she came to know about the dismissal of the suit. Immediately, she filed application to condone the delay in filing the petition to restore the suit. The delay is neither willful nor wanton, but due to the reasons stated above. She has fair chances of success and opportunity may be given to the petitioner to put forth her case on merits.

3.The respondent filed counter and submitted that the petitioner has not given any particulars with regard to her stay, as to when she went out of station for her studies and when she came back. She has not given any valid reason for the huge delay of 1700

days and prayed for dismissal of the application.

4.The learned Judge considering the averments made in the affidavit and counter affidavit and materials on record dismissed the application holding that the petitioner has not given any reasons for the delay in filing the petition.

5.Against the said order of dismissal, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel appearing for the petitioner submitted that the learned judge erred in dismissing the application on technical ground. It is well settled by the Hon'ble Apex Court and this Court that the application under Section 5 of Limitation Act must be considered, liberally. The learned Judge ought to have given an opportunity to put forth her case on merits. The learned Judge failed to see that the petitioner is ready and willing for speedy disposal of the suit and submitted that the learned Judge ought to have allowed the application.

7.I have heard the learned counsel appearing for the petitioner and also perused the entire materials on record.

8.The petitioner filed suit for declaration and delivery of possession and for other reliefs. The petitioner did not appear for the hearing on 23.06.2009 and on that day, the suit was dismissed for default. She filed I.A.No.389 of 2014 to condone the delay of 1700 days to restore the suit. From the affidavit filed by the petitioner, it is seen that the petitioner has not given any particulars as to how the delay has occurred and as to why she did not contact her Advocate. She has not given the details of the death of her father, who according to the petitioner was looking after the case. The learned Judge has correctly considered all these facts and dismissed the application and there is no illegality or irregularity warranting interference by this Court.

9.In the result, the Civil Revision Petition is dismissed. No costs.

SD/-

ASSISTANT REGISTRAR(RTI)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

The District Munsif ,
Thirumangalam.

+1 CC TO MR. S.SUNDARA PANDIAN, ADVOCATE, SR NO.4964

MAS/MR:14.02:2P/3C

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