



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (PD) (MD) No.330 of 2017

Mr. Ramasamy

... Petitioner

Vs.

1) P.Muthammal

2) R.Subbulakshmi

... Respondents

Prayer: The Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order passed in I.A.No.83 of 2016 in O.S.No.3 of 2012 dated 14.07.2016 on the file of the District Munsif Cum Judicial Magistrate, Kamudhi.

For Petitioner : Mr.C.Mayilvahana Rajendran

For Respondents : Mr.C.Meenakshi Ramprabhu
for Mr.Y.Prakash

O R D E R

The Civil Revision Petition is filed against the fair and decreetal order passed in I.A.No.83 of 2016 in O.S.No.3 of 2012 dated 14.07.2016 on the file of the District Munsif Cum Judicial Magistrate, Kamudhi.

2. The petitioner is the plaintiff in O.S.No.3 of 2012. He filed a suit for declaration and permanent injunction. The respondents filed written statement and contesting the suit. The suit was posted for trial on 08.01.2013 and on the date, the petitioner did not appear and the suit was dismissed for default. The petitioner filed I.A.No.83 of 2016 to condone the delay of 1141 days in filing the petition to restore the suit.

3. According to the petitioner, on 25.12.2012, his mother while doing her work in the agriculture field, she fell down and seriously injured. The petitioner was attending her for two months. After recovery, he tried to contact his advocate. He was informed that he left his practice and gone to his native place. After considerable effort, the petitioner collected the papers from his earlier advocate and engaged the present advocate and filed an application to condone the delay in filing the petition



to restore the suit. In the circumstances the delay in filing the petition to restore the suit is neither willful nor wanton, due to reasons stated above. Even after receiving notice in the application, the respondent did not appear and file counter affidavit in I.A.No.83 of 2016 and he was also set ex-parte in the application. The learned judge, considering the materials on record, dismissed the application holding that the petitioner has not given any valid reason to condone the delay in filing the petition to restore the suit. Against that, the present Civil Revision Petition is filed.

4. From the materials on record, it is seen that the petitioner has filed a suit for declaration and injunction and the said suit was posted for trial on 08.01.2013. When the suit was posted for trial, he did not appear. Therefore, the suit was dismissed for default. The petitioner filed I.A.No.83 of 2016 to condone the delay of 1141 days in filing the petition to restore the suit. The petitioner has given valid and sufficient reasons for the delay. It is well settled that length of delay is not a criteria. In the present case, there is nothing on record to show that the intention of the petitioner is not bona fide and he did not appear on 08.01.2013 and he has filed a petition only to drag on the proceedings.

5. In the circumstances, the order of the learned District Munsif Cum Judicial Magistrate, Kamudhi in I.A.No.83 of 2016 in O.S.No.3 of 2012 dated 14.07.2016 is liable to set aside. Accordingly the same is set aside and the Civil Revision Petition is allowed. No costs.

6. Since the suit in O.S.No.3 of 2012 is of the year 2012, the learned District Munsif Cum Judicial Magistrate, Kamudhi is directed to dispose of the suit as expeditiously as possible, in any event, not later than 31.07.2017.

Sd/-

Assistant Registrar(co)

/True Copy/

Sub Assistant Registrar

To

The District Munsif Cum Judicial Magistrate,
Kamudhi.

+1cc to Mr.C.Mayilvahana Rajendran, Advocate Sr.No.10961
akv

VB/SKN/RSK/SAR3/10.04.2017/2P/3C