

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.04.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(NPD)No.1260 of 2018

B.Suganya

... Petitioner

Vs.

Dhanalakshmi (Deceased)

1. Malarvizhi
2. Jayaraman
3. Arumugam
4. Lakshmipathy
5. Jeeva
6. Yasotha

...Caveator

... Respondents

Civil Revision Petition has been filed under Article 227 of the Constitution of India against the fair and decreetal order dated 14.02.2018 in I.A.No.1311 of 2017 in O.S.No.178 of 2011 on the file of the learned District Munsif Court at Thiruvetriyur.

For Petitioner : Mr.D.S.Ramesh

For Respondents : Mr.S.Veeraraghavan for R3/Caveator

ORDER

This civil revision petition has been filed against the order dated 14.02.2018 passed in I.A.No.1311 of 2017 in O.S.No.178 of 2011, on the file of the learned District Munsif Court, Thiruvetriyur.

2 The learned counsel for the petitioner would contend that the petitioner herein filed a suit for relief of declaration and permanent injunction. The petitioner filed a petition to implead the legal heirs of the deceased one M.Dhanalakshmi namely the first defendant in the suit and the same was allowed on 05.10.2016 directing the petitioner to amend the plaint, subsequently, the suit was dismissed for default on 20.03.2017. The learned counsel contended that the petitioner came to court on 21.04.2017 and the case was not listed on that day. In the mean time, the case bundle was also misplaced and found recently. Since the petitioner is unaware of the dismissal order dated 20.03.2017, the delay of 146 days has occurred in filing the petition to restore the suit. The trial court has failed to consider the reasons and dismissed the I.A.No.1311 of 2017 in O.S.No.178 of 2011 by an order dated 14.02.2018, filed under Section 5 of the Limitation Act to condone the delay of 146 days in filing the restoration petition and the same is under challenge in the present civil revision petition.

3 Learned counsel for the respondent contended that the petitioner has not given any proper reason for day to day delay in filing the petition to

restore the suit. Despite, several opportunities given to the petitioner to amend the plaint it was not done. Hence the respondents/defendants seeks dismissal of the civil revision petition.

6 Heard the learned counsel appearing on either side and perused the materials available on record.

7 On a perusal of the records, it would show that the suit was dismissed on 20.03.2017. The petitioner did not disclose any valid reasons for the delay of 146 days in filing the petition for restoring the suit. According to the petitioner/plaintiff, the counsel wrongly noted the date of hearing of the case, hence, the delay of 146 has been occurred. The learned counsel for the petitioner/plaintiff has also placed his reliance on various decisions of the Hon'ble Supreme Court, wherein it is stated that the Courts while considering the petition to condone the delay, should consider liberally and opportunity should be given to get substantial justice and should not be dismissed on the basis of technicality and it is made clear that the Rules of limitation are not meant to destroy the right of parties.

8 No doubt that mere carelessness on the part of the counsel, the

parties should not be suffered at the same time, the respondent should also be adequately compensated with cost.

9 In view of the above reason, the order dated 14.02.2018 made in I.A.No.1311 of 2017 in O.S.No.178 of 2011, on the file of the learned District Munsif, Thiruvetriyur, is hereby set aside. The petitioner/plaintiff is directed to pay a sum of Rs.25,000/- to the respondents/defendants within a period of two weeks from the date of receipt of a copy of this order, failing which, the petition to condone the delay in I.A.No.1311 of 2017 in O.S.No.178 of 2011 shall stand dismissed automatically without any further reference. Since the suit is of the year 2011, the learned trial Judge is directed to dispose of the main suit within a period of three months from the date of receipt of a copy of this order and the parties are also directed to extend their fullest cooperation for expeditious disposal of the suit. Since the learned counsel for the petitioner himself admitted that due to his own fault there was a delay in filing the application to restore the suit, the petitioner is at liberty to recover the cost to be payable by her from the learned counsel for the petitioner.

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Index:Yes/No

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P.VELMURUGAN, J.,

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To

The District Munsif Court, Thiruvetriyur.



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