

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.02.2018

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR**

C.R.P. (NPD) No.167 of 2018

Bharani

Petitioner

Versus

Rangaraj

Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code against the order and decretal order dated 30.10.2014 made in I.A. No.387 of 2013 in I.A. No.55 of 2013 in O.S. No.37 of 2008 on the file of the Court of the Principal Sub Judge at Pondicherry.

For Petitioner : Mr.T.Dhanasekaran

For Respondent : Mr.T.S.Baskaran

ORDER

The petitioner has filed O.S.No.37 of 2008 before the Principal Sub Court, Puducherry for declaration and permanent injunction. The aforesaid suit was dismissed for default on 10.12.2012. Therefore, the petitioner filed an application in I.A. No.55 of 2013 to restore the suit. The said application was also dismissed on 27.08.2013. Again an application in I.A. No.387 of 2013 was filed to restore the I.A. No.55 of 2013, which was also dismissed by the Court below.

2. According to the learned counsel for the petitioner the suit is filed for declaration and permanent injunction. Only due to bonafide reasons, the petitioner was not in a position to appear before the Court below on the date of hearing.

3. The respondent has filed the counter statement by stating that the petitioner with an intention to drag on the proceedings has made the application to be dismissed for default and therefore filed an application. Since, there was no sufficient cause in the petition to restore the suit, and in the absence of any proof, produced either by the petitioner or his Power Agent, the second petition to restore the application was also rejected by the Court below. According to the learned counsel for the petitioner that the suit is filed by the petitioner for declaration and permanent injunction. Only due to the bonafide reasons, the petitioner could not appear before the Court below.

4. The learned counsel for the respondent would submit that the respondent has also filed the suit in O.S. No.853 of 2006 for permanent injunction and the same is pending before the Principal Sub Court, Pondicherry. The Court below has rightly take note of the conduct of the petitioner that the petitioner is protracting the suit proceedings by one way or the other. Further, no sufficient reasons or any materials were placed before the Court below, to prove the bonafide reasons for allowing the application.

5. In the light of the judgment of the Supreme Court in ***In Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy***

**& others [2013 (5) CTC 547 (SC)]**, the Hon'ble Supreme Court has held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation of delay.

6. Since the petitioner has filed the instant application to restore the application in I.A. No.55 of 2013, an opportunity has to be granted to the petitioner to adjudicate the suit on merits. The petitioner also undertakes before this Court that no further adjournment will be sought for, before the Trial Court in the event of the application is restored and the petitioner will co-operate for disposal of the suit. In order to provide an opportunity to the petitioner, the order passed in I.A. No.387 of 2013 and in I.A. No.55 of 2013 in O.S. No.37 of 2008 are set aside, subject to payment of cost of Rs.2,000/- to be paid to the respondent. The said amount shall be paid within a period of two weeks from the date of receipt of the copy of this order.

7. In view of the above facts, the Civil Revision Petition is allowed on payment of cost, with a direction the Court below shall dispose of the I.A. No 55 of 2013 in O.S. No.37 of 2008, within a period of four weeks from the date of compliance of the conditional order. No costs.

07.02.2018

Index : Yes/No  
Internet : Yes / No  
Speaking/Non Speaking  
vsi2

**D.KRISHNAKUMAR, J.**

vsi2

To  
Principal Sub Judge at Pondicherry.



G.R.P. (NPD) No.167 of 2018

07.02.2018

WEB COPY



# WEB COPY