

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM:

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

CRP(NPD) No.4818 of 2017

Sivagami

.. Petitioner

-Vs-

Ramachandran

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order dated 26.07.2013 made in I.A.No.496 of 2010 in. O.S.No.307 of 2008 on the file of the Sub Court, Rasipuram.

For Petitioner : Ms.P.Sharmila

For Respondent : Mr.G.Pugazhenthir

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ORDER

The petitioner has filed a suit in O.S.No.307 of 2008 before the Sub Court, Cuddalore, Rasipuram. The suit is for specific

performance. The aforesaid suit was posted for cross examination of PW1. From 24.03.2010 onwards, due to the severe viral fever, the petitioner was bedridden and hence, the petitioner could not appear before the Sub Court, Cuddalore on 12.04.2010. On that date, the suit was dismissed for default for the absence of the petitioner.

2. According to the petitioner, the aforesaid suit was dismissed, due to the aforesaid falsified reason. A counter statement has been filed by the respondent. Further, the petitioner has filed a Medical Certificate in support of her contention as Ex.P2, which says that the petitioner was advised to take bed rest for 10 days from 22.08.2012 and the prescription dated 06.04.2010 issued by the Doctor was also marked before the Court below.

3. The learned counsel for the respondent has contended that the petitioner, who is an accused in STC.No.313 of 2010 on the file of Judicial Magistrate Court, Rasipuram, has appeared before the learned Judicial Magistrate, Rasipuram, on 12.04.2010 and received the copies of the said case on that day.

4. In the light of the facts and submissions, the trial Court dismissed the petition in I.A.No.496 of 2010 in O.S.No.307 of 2008. As against the said order, the petitioner has filed the present Civil Revision Petition before this Court.

5. The learned counsel for the petitioner would submit that the petition shall be allowed by imposing cost on the petitioner for condoning the delay in to set aside the order dated 12.04.2010.

6. Per contra, the learned counsel appearing for the respondent would submit that the conduct of the petitioner would clearly show that the petitioner has not approached the Court in clean hands. On contrary, the petitioner has filed the incorrect and false statement before the Court below. The Court below has rightly dismissed the I.A.No.496 of 2010 in O.S.No.307 of 2008, in view of the above facts and considering the contention of the parties, the petition in I.A.No.496 of 2010 in O.S.No.307 of 2008 was filed by the petitioner for condoning the delay of 79 days in filing the petition to restore the suit. The Court below should have liberally considered the case in light of the decision of this Court as well as the Hon'ble Supreme Court. But, on the facts, the petitioner has not disclosed the correct facts and

has filed a false affidavit before the Court below, by stating that she was suffering from viral fever and to that extent, a Medical Certificate was produced by the petitioner. But the Court below clearly says that the petitioner attended a criminal case in STC No.313 of 2010 before the Judicial Magistrate Court, Rasipuram on the very same day.

7. Therefore, in the light of the decision rendered by the Hon'ble Supreme Court in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others*** reported in ***(2013) 12 Supreme Court Cases 649***, wherein Hon'ble Supreme Court of India has held that:

21.9. (ix) the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.11(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation."

8. Therefore, from the aforesaid fact and the decision of the

Hon'ble Supreme Court of India, the petition deserves to be considered in liberal approach or lenient approach to condone the delay. *Prima facie* case is made out in the order of the Court below.

9.Thus, the Civil Revision Petition is dismissed. No costs.

25.01.2018

Speaking/Non-Speaking order

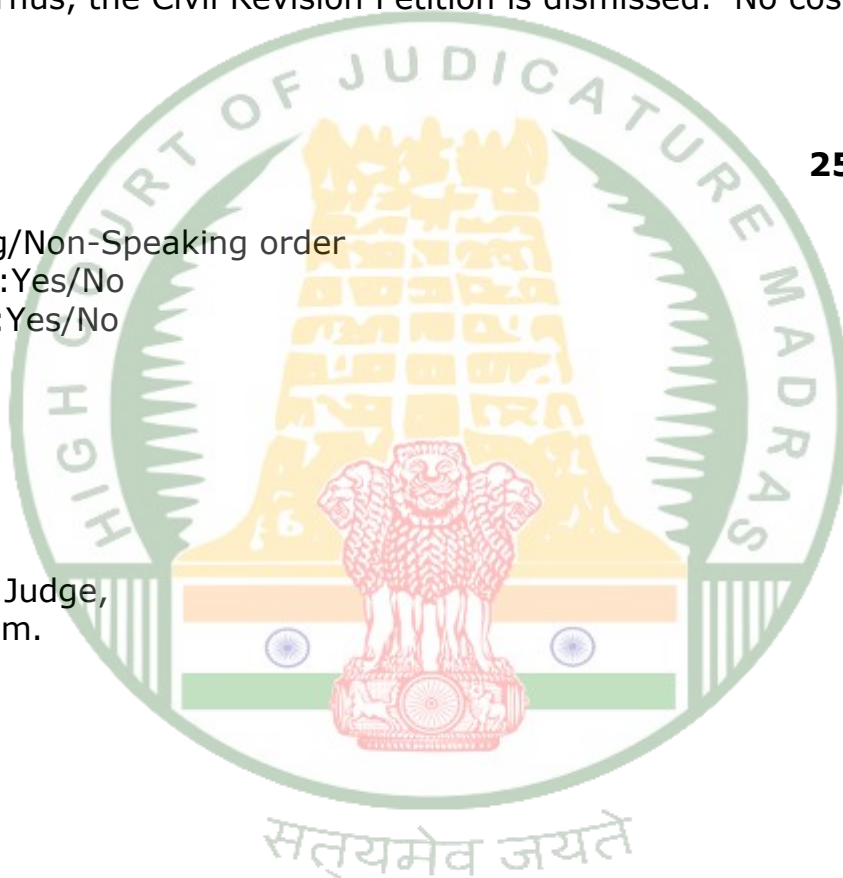
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To

The Sub Judge,
Rasipuram.



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D. KRISHNAKUMAR J.,

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