

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2729 of 2012

Krishnasamy

.. Petitioner

Vs.

1.P.P.Karuppaiah (Died)

2.K.Pushpa

3.Suresh Kumar

4.Sujatha

5.Ramesh Kumar

.. Respondents

(RR3 to 5 brought on record as Lrs of the deceased R1 vide Court order dated 15.02.2018 made in C.M.P.No.12113/2016 in C.R.P.No.2729/2012)

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C against the fair and decretal order dated 01.07.2011 made in I.A.No.334 of 2010 in O.S.No.481 of 1999 on the file of the Principal Subordinate Court, Coimbatore.

For Petitioner

: Mr.B.R.Shankaralingam

For R1

: Died

For R2 to R5

: Mr.R.Gokulakrishnan
for Mr.S.Gunalan

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ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 01.07.2011 made in I.A.No.334 of 2010 in O.S.No.481 of 1999 on the file of the Principal Subordinate Court, Coimbatore.

2.The petitioner is the plaintiff, the deceased first respondent and second respondent are the defendants and respondents 3 to 5 are the legal heirs of the deceased first respondent in O.S.No.481 of 1999 on the file of the Principal Subordinate Court, Coimbatore. The plaintiff filed the said suit for recovery of money based on the mortgage. The respondents 1 and 2 were contesting the suit. When the suit was posted for trial, the petitioner did not appear and suit was dismissed for default. The petitioner filed I.A.No.334 of 2010 to condone the delay of 1413 days in filing the petition to restore the suit which was dismissed for default. According to the petitioner, he was seriously hospitalized for paralytic stroke namely Ischemic stroke (L) MCA territory on 22.09.2005 in Ramakrishna Hospital and was discharged on 26.09.2005. Thereafter, he met his Advocate and came to know about the dismissal of the suit. He filed application C.F.R.No.4354 on 01.02.2006 for restoration of the suit. Again the

petitioner's health condition deteriorated and when he recovered from illness and met his Advocate, he came to know that application filed by him for restoration of the suit was returned and got mixed up with the bundles in the Advocate's office. In view of the same, the present application is filed and hence the delay is neither wilful nor wanton.

3.The deceased first respondent filed counter affidavit, which was adopted by the second respondent and denied all the averments and contended that the petitioner has not furnished details about his illness. The petitioner has not given any sufficient and valid reason for condoning the huge delay of 1413 days.

4.The learned Judge considering the averments in the affidavit, counter affidavit and judgments of this Court and Hon'ble Apex Court, dismissed the application holding that the petitioner has not given any valid and sufficient reason to condone the delay.

5.Against the said order of dismissal dated 01.07.2011 made in I.A.No.334 of 2010 in O.S.No.481 of 1999, the petitioner has come out with the present Civil Revision Petition.

6. Heard the learned counsel for the petitioner as well as the respondents 2 to 5 and perused the materials available on record.

7. From the materials available on record, it is seen that the petitioner has filed application to condone the delay in filing a petition to restore the suit on the ground that due to his illness, he was unable to be present in the Court for trial. According to the petitioner, he was admitted in the Ramakrishna Hospital on 22.09.2005. The suit was dismissed for default and he filed petition to restore the suit. His application to restore the suit was returned and the same was misplaced in the Advocate's office and could not be traced and represented in time. The present application is filed to condone the delay of 1413 days in filing the petition to restore the suit. The petitioner has not filed any details as to from when he was suffering from illness and when he recovered. The petitioner did not examine himself or the Doctor before the learned Judge and did not produce and mark medical certificate to show that he was suffering from illness and was taking treatment continuously till he filed application to condone the delay.

8.The learned Judge has considered all the above facts and judgment of this Court and Hon'ble Apex Court with regard to condonation of delay and dismissed the application by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 01.07.2011 made in I.A.No.334 of 2010 in O.S.No.481 of 1999.

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

Index :: Yes/No
gsa

To

The Principal Subordinate Judge,
Coimbatore.

09.03.2018

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V.M.VELUMANI,J.

gsa



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