



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2018

CORAM

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

C.R.P. (MD) No. 74 of 2018 (NPD)

WEB COPY

B. Rajaram

.. Petitioner/Petitioner/Plaintiff

Vs.

1. R. Maheswari

2. R. Karthick

.. Respondents/Respondents/Defendants

PRAYER: Petition filed under Section 115 of C.P.C., praying to set aside the fair and decreetal order dated 14.11.2017, made in I.A.No.323 of 2016 in O.S.No.86 of 2014 on the file of the Subordinate Court, Devakottai and to restore the suit in O.S.No.86 of 2014 on the file of the Subordinate Court, Devakottai.

For Petitioner : M/s.VASTLAW Associates
For respondents : Mr.A.Prem Anand

ORDER

This Civil Revision Petition has been filed by the petitioner / plaintiff challenging the fair and decreetal order passed by the learned Subordinate Judge, Devakottai in I.A.No.323 of 2016 in O.S.No.86 of 2014, dated 14.11.2017.

2. The petitioner herein, as plaintiff, has filed the suit in O.S.No.86 of 2014 on the file of the Subordinate Court, Devakottai, for declaration and recovery of possession against the respondents / defendants. Since the petitioner / plaintiff has failed to appear before the Court below on 22.06.2016, the suit was dismissed for default. In order to restore the suit, the petitioner / plaintiff has filed I.A.No.323 of 2016. The Court below has dismissed the said interlocutory application, against which the present civil revision petition has been filed by the petitioner / plaintiff.

3. The learned counsel for the petitioner / plaintiff would submit that the petitioner / plaintiff is temporarily residing at Chennai and he is aged about 78 years. Though the petitioner / plaintiff had decided to appear before the Court on 22.06.2016, due to dysentery, he could not appear before the Court on that day and therefore, the failure of the petitioner / plaintiff to appear before the Court below is neither wilful nor wanton, and it was an unfortunate one and after knowing the dismissal of the suit, he has immediately filed the petition to restore the suit within time limit of 30 days from the date of dismissal of the suit on 22.06.2016. He would further submit that the Court below has dismissed the suit holding that the petitioner / plaintiff has



not produced any proof for his ailment. As the petitioner / plaintiff took homemade treatment for his ailment, he could not produce any proof. The Court below, without considering the same, has erroneously dismissed the said petition. The petitioner / plaintiff has fair chance of getting success in the suit and therefore, one more opportunity may be given to the petitioner / plaintiff and the revision petition may be allowed on terms.

4. The learned counsel appearing for the respondents / defendants would submit that though the case was adjourned to several dates, the petitioner / plaintiff has purposefully failed to appear before the trial Court and to conduct the case. As the petitioner / plaintiff has no case at all and in order to delay the proceedings, he has not appeared before the Court below. Though it is stated that due to ailment, he could not appear before the Court, he does not produce any document to substantiate the same. The Court below has rightly dismissed the said petition and the same need not be interfered with.

5. Heard the learned Counsel appearing for the petitioner / plaintiff and the learned counsel appearing for the respondents / defendants and perused the materials available on record.

6. It is seen from the record that on three occasions, that too from 07.06.2016 onwards, none appeared for the petitioner / plaintiff and hence, the suit was dismissed for default on 22.06.2016. According to the petitioner / plaintiff, due to dysentery, he could not appear before the Court on the date of dismissal of the suit ie., on 22.06.2016 and that due to homemade treatment, he could not produce any document to prove his contention. The petitioner / plaintiff is aged about 78 years. Though the reason assigned by the petitioner / plaintiff appears to be flimsy, it cannot be rejected in toto. The petitioner / plaintiff has filed the petition to restore within time. If really, it was the intention of the petitioner / plaintiff to delay the proceedings, as stated by the respondents / defendants, the petitioner / plaintiff would not have filed the petition for restoration immediately. In view of the above and in the interest of justice, this Court is inclined to allow this revision petition on terms.

7. In the result, this civil revision petition is allowed and the order impugned in this petition is set aside and I.A.No.323 of 2016 is allowed subject to the payment of cost of Rs.1,500/- (Rupees one thousand and five hundred only) to the respondents / defendants within a period of two weeks from the date of receipt of copy of this order, failing which this order shall stand vacated automatically.

<https://hcservices.ecourts.gov.in/hcservices/>

8. Considering the submissions of both sides and also considering the fact that the suit is of the year 2014, the Court



below is directed to dispose of the suit within a period of six months thereafter. Both the parties are directed to co-operate with the trial Court for early disposal of the suit. No costs.

Sd/-

Assistant Registrar(W)

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/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Devakottai.

Copy to

1. The Section Officer, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.
2. The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court,
Madurai.

GCG

VB/SV/MMS/SAR3/09/03/2018/3P/5C

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