



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
C.R.P. (NPD) (MD)No. 2103 of 2014
and
M.P (MD) .No.1 of 2014

Vijayamani

... Petitioner/Petitioner/Appellant

Vs.

Alagammal

... Respondent/Respondent/Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to call for the records and set aside the same fair and decreetal order dated 16.04.2014 in I.A.No.63 of 2013 in unnumbered A.S. of 2014 on the file of the Principal Sub-Court, Dindigul and the allow the revision.

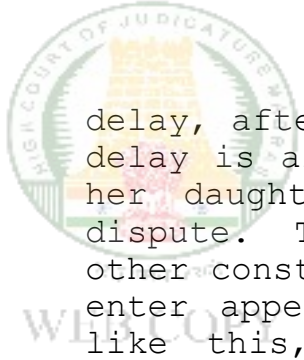
For Petitioner : Mr.H.Lakshmi Shankar
For Respondent : Mr.M.R.Sreenivasan

ORDER

This Civil Revision Petition is filed against the order dismissing the petition filed by the revision petitioner to condone the delay of 281 days in filing the appeal as against the Judgment and Decree of the trial Court in O.S.No.901 of 1997.

2.The respondent herein filed a suit in O.S.No.901 of 1997 on the file of the Principal District Munsif Court, Dindigul for declaration of title and for permanent injunction. The suit is also for mandatory injunction to remove the encroachment alleged to have been made by the revision petitioner in the suit property. The suit was decreed by a judgment and decree, dated 28.06.2012. However, the revision petitioner filed an appeal only on 03.06.2013 and in the process, there is a delay of 281 days.

3.In the affidavit filed in support of the petition to condone the delay, the petitioner has stated that she is a destitute widow and she had two daughters and as one of her daughter gave birth to a child on 19.12.2012, the revision petitioner stayed along with her so as to give her pre-natal and post-natal care. Therefore, the revision petitioner could not consult with her Advocate and instruct him to file the appeal in time. However, the respondent has filed a counter affidavit referred to the fact that the respondent herein filed execution petition in E.P.No.102 of 2012 on 11.10.2012 and that the revision petitioner entered appearance through her Advocate on 15.12.2012. Since the revision petitioner had knowledge about the case and +had engaged an Advocate on 15.12.2012, the lower Court found that the petitioner has not explained the delay properly. The revision petitioner entered appearance before the execution Court on 15.12.2012. It is true that the petitioner has not explained the



delay, after she engaged the Counsel in the execution Petition. The delay is also 281 days. The fact that the petitioner had attended her daughter for her pre-natal and post-natal care, is not in dispute. The revision petitioner being a destitute widow might have other constraints and could have signed the vakalat for a counsel to enter appearance in December 2012 in execution petition. In case like this, the Court may not adopt any strict principles and necessarily some lenience should be shown.

4.The learned counsel for the petitioner though submitted certain points on merits, this Court may not look into the case on merits at this stage. The petitioner is depending upon others for conducting the case. In such circumstances, this Court is inclined to entertain this revision petition on terms.

5.In the result, the order passed by the lower Court in I.A.No.63 of 2013 in unnumbered Appeal Suit, dated 16.04.2014, is set aside. The petition in I.A.No.63 of 2013 to condone the delay of 281 days in filing the appeal suit stands allowed on condition that the revision petitioner shall pay a sum of Rs.12,000/- [Rupees Twelve Thousand only] to the respondent, within a period of three weeks from the date of receipt of a copy of this order. The petitioner is directed to file or show the proof of payment in compliance with the direction of this Court before the lower Court.

6.With the above observation, the Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar(SAR-IV)

To

The Principal Sub-Judge,
Dindigul.

Copy To:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1CC to Mr.H.Lakshmi Shankar, Advocate, SR.No. 71880

+1CC to Mr.R.Nandakumar, Advocate, SR.No. 71758

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