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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2018

CORAM

THE HONOURABLE MR. JUSTICE M.V. MURALIDARAN

C.R.P. (NPD) (MD) No.921 of 2018

and

C.M.P. (MD) No.4036 of 2018

K.Kanaga Leela

... Petitioner/Petitioner/2nd Defendant

-vs-

Velu (Died)

1. Sudalaimadi

2. Shanmugam

3. Karupe

... Respondents/Respondents 2 to 4/
Plaintiff 2 to 4

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code to set aside the fair and decretal order dated 09.03.2018 passed in I.A.No.681 of 2017 in O.S.No.226 of 2009 on the file of District Munsif Court, Srivaikuntam.

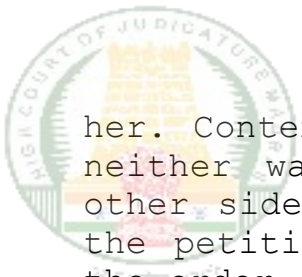
For Petitioner : Mr.M.P.Senthil

For Respondents : No Appearance

O R D E R

The revision petitioner is the 2nd defendant in O.S.No.226 of 2009 on the file of District Munsif Court, Srivaikuntam and in the suit, the plaintiff sought for the relief of declaration, etc. In the suit, an exparte order was passed against the defendants on 11.02.2016 on account of their non appearance. Therefore, the revision petitioner/2nd defendant has filed an applications in I.A.No.681 of 2017 for condoning the delay of 558 days in filing petition for setting aside the said exparte order and the said application came to be dismissed by the Trial Court, on the ground that no sufficient cause has been shown for the delay. Aggrieved by such dismissal, the revision petitioner is before this Court.

2. It is the case of the revision petitioner that the Trial Court had posted the matter for cross examination of the plaintiff by the petitioner on 09.09.2017 and though it was stated by her previous Advocate that he had sent a letter to her informing such position, she had not received any such letter, which made her impossible to appear on 09.09.2017. It is the further case of the petitioner that due to her old age problems, she could not appear before the Trial Court and she also did not contact her Advocate, which ended in dismissal of the suit against



her. Contending that her non appearance before the Trial Court is neither wanton nor wilful and no prejudice would be caused to other side, in the event of condoning the delay so as to enable the petitioner to challenge the exparte order, it is prayed that the order of the Trial Court is liable to be set aside.

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3. Heard learned counsel for the petitioner and perused the material documents available on record. None appeared on behalf of the respondents to prosecute the case.

4. It is stated by the petitioner that she had filed an affidavit before the Trial Court, explaining the reasons for the delay and the Trial Court has not taken into account the said affidavit and dismissed the petition in a biased manner. It was held by the Trial Court that on 18.04.2017, the petitioner had entered her appearance in E.P.No.4 of 2017 through her Advocate and therefore, the Court had rejected her plea that she had fallen sick from 19.04.2017 onwards.

5. It is apposite to state here that as repeatedly held by this Court, in the matter of condonation of delay, a lenient view should be taken to condone the delay. This Court, on earlier occasion in the case of G.Krishnamoorthy vs., Arulmighu Sri Pataleeswarar Devasthanam, rep. by its Executive Officer, Cuddalore, reported in 2010 (1) MWN Civil 837, has clearly held that the petition for condonation of delay can be allowed, if it is proved that the party could not be able to contact the lawyer in respect of his/her case.

6. In the present case on hand, it has been repeatedly reiterated by the petitioner that pursuant to her ill-health / old age, there was no communication between her and her Advocate and therefore, the delay of 558 days has occurred in filing petition to set aside the exparte order, which is an acceptable ground to consider the case of the petitioner. Accordingly, upon hearing the submissions of both sides and finding merits in contention raised by the petitioner, this Court is of the view that the order dated 09.03.2018 passed in I.A.No.681 of 2017 in O.S.No.226 of 2009 by the learned District Munsif, Srivaikuntam, is liable to be set aside.

7. In the result,

(a) this Civil Revision Petition is allowed and the order dated 09.03.2018 passed in I.A.No.681 of 2017 in O.S.No.226 of 2009 by the learned District Munsif, Srivaikuntam, is hereby set aside, subject to the condition that the petitioner shall pay a sum of Rs.15,000/- (Rupees Fifteen Thousand only) to the Tamil Nadu Mediation and Conciliation Centre, attached to this Court within a period of two weeks from the date of receipt of a copy of this order;.



No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(T&P)

Sub Assistant Registrar(CS-IV)

To:

1. The District Munsif,
Srivaikuntam.
2. The Record Keeper, V.R.Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.P.Senthil, Advocate Sr.No.68032

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VB/MMS/SAR4/14.08.2018/3P/5C

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