

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT**

**I.A.No. 1 of 2018**

**And**

**C.R.P.No.3809 of 2018**

**COMMON ORDER : (Oral)**

I.A.No.1 of 2018 is filed seeking to condone the delay of 115 days in filing the C.R.P.

2. Vide C.R.P.No.3809 of 2018, the petitioner has challenged the order dated 7<sup>th</sup> December 2017, passed in I.A.No.672 of 2017 in O.S.No.217 of 2011, whereby, the petition filed by the plaintiffs under Section 5 of Limitation Act to condone the delay of 55 days in filing the petition to set aside the default order, has been dismissed.

3. Learned counsel appearing on behalf of petitioner submits that the petitioner could not attend the Court as she was sick and unable to move from the bed because of illness. Therefore, the learned Judge ought to have appreciated that the petitioner is an old lady of 90 years, suffering from various diseases, as such, she failed to appear.

4. Learned counsel for petitioner further submits that plaintiff No.2, who is the son of plaintiff No.1 (petitioner herein) died on 21.06.2016. As he was dealing with the case, the petitioner did not

know about the details of the case, as such, she could not attend the Court.

5. It is not in dispute that in the suit, issues were settled on 09.07.2012. Since then, the suit was being posted for trial. On 2<sup>nd</sup> August 2013, the suit was dismissed for default. The plaintiffs filed I.A.No.1094 of 2013 to set aside the dismissal order. It was allowed on 22<sup>nd</sup> April 2014 to give an opportunity to the plaintiffs. Since then, the matter was being posted for appearance of plaintiffs and several times costs were imposed. Though conditional orders were passed on several occasions, the plaintiffs did not get ready to commence trial though the matter is pertaining to the year 2011. After giving adjournments for more than three years to commence trial, the suit was again dismissed for default on 18<sup>th</sup> July 2017.

6. Seeking to set aside the aforesaid default order, the plaintiffs filed I.A.No.672 of 2017 under Section 5 of the Limitation Act before the trial Court. In the said application, the petitioner herein stated that she took treatment from 10.07.2017 to 20.09.2017 for hyper tension and filed medical certificate to that effect. But, she did not give any reasons as to why the other petitioners/plaintiffs did not attend the Court to commence the trial. The said application has been dismissed by the trial Court vide order dated 7<sup>th</sup> December 2017.

7. In addition to above, it is pertinent to mention here that the present petition is filed with a delay of 115 days. Therefore, I.A.No.1 of 2018 is dismissed.

8. Consequently, C.R.P.No.3809 of 2018 stands dismissed on merits as well as on the ground of delay.

Pending miscellaneous applications, if any, shall stand closed.

6<sup>th</sup> July 2018

ajr



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SURESH KUMAR KAIT, J