

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD).No.1902 of 2004

M/s.Azeez badsha Sahib's Charities,
3-A, Kodambakkam High Road,
Chennai, represented by its,
Secretary.

... Petitioner/plaintiff

Vs.

1. Azeem Jehan Begum, (Deceased)
W/o.Late Mohammed Aminullah Badsha,
No.1, Irusappan Street,
Royapettah,
Chennai-14.
2. Delite Agencies,
108, General Patters Road,
Chennai - 600 002.
3. Abdul Jabbar and Abdul Salam,
Betel Nut Shop,
108, General Patter Road,
Chennai - 600 002.
4. MD.Abdulla Badsha,
108, General Patters Road,
Chennai - 600 002.
5. MD.Asadulla Badsha,
108, General Patters Road,
Chennai - 600 002.
6. Md.Akramulla Badsha,
108, General Patters Road,
Chennai - 600 002.
7. Anisa Mussarrat,
108, General Patters Road,
Chennai - 600 002.

8. MD.Alimulla Badsha,
108, General Patters Road,
Chennai - 600 002.

... Respondents/Defendants

(RR4 to 8 brought on record as LRS of
the deceased R1 viz Azeem Jehan Begum
vide Court order dt.13/12/2017 in
CMP.No.1824 & 1825 of 2004.

Civil Revision Petition filed U/s. 11507 of the CPC
against the order dated 30.01.2004 in I.A.No.13455 of 2001 in
O.S.No.8795 of 1990 on the file of the IV Assistant City Civil
Court, Chennai.

For Petitioner : Mr.R.Sureshkumar

For RR 4 to 6 & 8 : Mr.N.A.Nissar Ahmed

R1 : Died, RR2 & 3 - givenup

O R D E R

The above Civil Revision Petition is filed by the
petitioner/ plaintiff challenging the order dated 30.01.2004 in
I.A.No.13455 of 2001 in O.S.No.8795 of 1990 on the file of the
IV Assistant City Civil Court, Chennai.

2. This revision has been filed against the order of the
Court below dismissing the application in I.A.No.13455 of 2001
filed under Section 5 of the Limitation Act, to condone the
delay of 695 days to restore the suit which was dismissed for
default on 17.12.1998. The suit has been originally filed for
eviction of the respondents. It appears that the respondents
have also filed a suit in O.S.No.2361 of 1991 against the
plaintiff contending that they are not the trustees. It is the
contention of the revision petitioner that both the suits were
ordered to be tried together. When the matter came before the
Trial Court, the Trial Court dismissed the suit in O.S.No.8795
of 1990 for non appearance and thereafter, proceeded with the
other suit. Subsequently, the revision petitioner came to know
that the suit has been dismissed for default. Accordingly, the
application has been filed to condone the delay of 695 days on
the ground that the petitioner's wife had died, therefore, the
delay has occurred. However, the Trial Court dismissed the
application on the ground that the delay has not been properly
explained. The Trial Court relied upon some judgments and
dismissed the applications. In fact, the trial Court has not
decided the matter on the factual issue and not gone into the
affidavit to find out there is any sufficient cause. But the

fact remains that there were two suits in respect of the same properties one by the tenant and one by the trustees, at this stage, one suit has been dismissed. Their suit has been filed for eviction of the defendants/respondents. No doubt, there was a delay in filing application to restore the suit. It is specifically averred by the plaintiff that his wife had died, therefore, he could not file an application immediately, therefore there was a delay. Such explanation in my view is reasonable. When the wife of any person died, the person will be in deplorable condition, it cannot be denied at all. The trial Court ought to have considered the substantial rights of the parties and should have given an opportunity. Of course, every day delay has to be explained at the same time Court should be liberal in extending its discretion to advance substantial justice.

3. Considering the nature of the averments in the affidavit, this court is of the view that one more opportunity should be given to the revision petitioner to establish the substantial right.

Accordingly, the order of the Trial Court is set aside and the delay is condoned. In the result, the civil revision petition is allowed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nsd

To

1.The IV Assistant Judge,
The IV Assistant City Civil Court,
Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.S.Sureshkumar, Advocate, S.R.No.35867

+1cc to Mr.N.A.Nissar Ahmed, Advocate, S.R.No.35859

C.R.P. (NPD) .No.1902 of 2004

EV (CO)

RRS (30/05/2019)