

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

CORAM:

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.873 of 2011

M.Indira Gandhi

Petitioner

Vs

Periyasamy

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dated 14.09.2010 passed in I.A.No.277 of 2009 in O.S.No.1383 of 2004, on the file of Principal District Munsif Court, Erode.

For Petitioner : Mr.K.Kannadhasan for
M/s.P.Muthukumarasamy &
Mr. V.Anandhamoorthy

For Respondent : Mr.M.Arun for
Mr.A.Sundaravadhanan

ORDER

Aggrieved over the order dated 14.09.2010 passed in IA.No.277 of 2009 in O.S.No.1383 of 2004 by the Principal District Munsif, Erode, the petitioner who is the plaintiff in the above referred suit is before this Court seeking the relief to set aside the order passed in IA.No.277 of 2009.

2. Earlier, the petitioner herein has filed a suit as against the respondent herein in the year of 2004, seeking the relief of permanent injunction restraining the defendant, his men, agent from in any manner interfering with the peaceful possession and enjoyment of the suit properties. When the suit was posted for trial in the special list on 07.06.2005, the petitioner has not appeared before the trial Court. Hence, by an order dated 07.06.2005, the suit filed by the petitioner was dismissed for default.

3. Aggrieved over the same, the petitioner has filed an application under Section 5 of Limitation Act in the month of November 2008 and prayed to condone the delay of 117 days, in filing the application to restore the suit. The learned Principal District Munsif, Erode after affording opportunity to the respondent, by an order dated 14.09.2010, had dismissed the application filed by the petitioner, by following the judgment reported in 2010 (3) LW 358. Before passing the said dismissal order, the learned Principal District Munsif, Erode examined the petitioner and the respondent as PW 1 and RW 1 respectively. That apart, two documents have been marked as Exs.R.1 & R2.

4. Challenging the said order passed by the learned Principal District Munsif, Erode, the petitioner is before with this present Civil

Revision Petition.

5. Today when the petition came up for hearing, the learned counsel appearing for the petitioner is present and made a submission that when at the time, the case was posted in the special list, the petitioner was suffering from jaundice and was taking various country treatment in the remote villages, thereby she could not contact her counsel and at later point of time only, she came to know about the dismissal order passed by the learned trial judge. According to her, the absence of the petitioner on the day on which the case was posted for trial is neither wanton nor wilful.

6. On the other hand, the learned counsel appearing for the respondent would contend that the reason stated by the petitioner that she was suffering from jaundice and taking country treatment from various villages is not at all true. Further the learned counsel submitted that on 07.06.2005, when the case was posted before the trial court, she was working as maiden in Nutrition Noonmeal Scheme in Kilambadi Village. In order to prove the same, Attendance Register and Salary Register have been marked on the side of the Respondent. Moreover, the reason projected by the petitioner was not substantiated with the relevant documents. Hence, the order passed by the learned Principal District Munsif, Erode needs no interference of this Court.

7. Submissions made by either side counsel are considered.

8. According to the petitioner on the day on which the case was posted for trial, she was suffering from jaundice. Except her oral evidence, no other documents have been produced in order to substantiate the same. Whereas, on the side of the respondents, in order to disprove the contentions raised by the petitioner, the documents such as Attendance Register maintained in the office of the petitioner, in which she was working as Maiden and Acquittance Register for the year 2005-2006 were marked as Exs.R.1 & 2. Those documents reveal the fact that on 07.06.2005, i.e, on the day on which the Suit instituted by the petitioner was dismissed, the petitioner had attended the duty. Moreover, she has also got salary for the period 2005-2006. The said circumstances clearly proves that she was regularly attending her office and receiving salary. At this juncture, this Court wants to mention here that if the reason projected by the petitioner is true one, she could not attend the office on the day, on which the case was dismissed. Further, it is also not possible to receive salary for the period 2005-2006. So, the entries made in the said document clearly reveals the fact that the affidavit filed by the petitioner in support of the petition filed to condone the delay in filing the application to restore the suit is having false averments.



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9. In the impugned order passed by the learned Principal District Munsif, Erode, has clearly hold the relevancy of documents Ex.R.1 and Ex.R.2 with the case and dismissed the application filed by the petitioner. Further, during the time of giving evidence as PW 1, the petitioner admitted that in cases, (CC Nos.1738 of 2004 and 1220 of 2004), in which she was arrayed as accused , she was regularly appearing at the relevant point of time. So, at any event the reason stated by the petitioner for allowing the application before the trial court is not at all having any merits and hence, interfering with the impugned order passed by the learned Principal District Munsif, Erode is not necessary.

10. In view of the above discussions, this Civil Revision petition is dismissed. No costs.

04.11.2019

vrn

To

The Principal District Munsif Court, Erode.

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R.PONGIAPPAN, J.,

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