

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Civil Revision Petition (PD) No.2990 of 2019

Suseela

... Petitioner

-Vs-

1.Alagesan,
rep.by his power agent/wife Alagammal

2.Dhanam

3.Jeyalakshmi

4.Sanjeevi

... Respondents

Prayer : Civil Revision Petition under Section 115 of Civil Procedure Code against the fair and decreetal order dated 31.10.2018 passed in I.A.No.71 of 2018 in A.S.No.7 of 2012 by Mahila Court, Perambalur.

For Petitioner : Mr.A.Mohammed Ismail
For Respondents : Mr.S.Mukunth

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 31.10.2018 passed in I.A.No.71 of 2018 in A.S.No.7 of 2012 by Mahila Court, Perambalur.

2. Before the Court below, the first defendant filed this application to condone the delay of 339 days in filing the petition to restore the appeal suit, which was dismissed for default. The said application was dismissed by the Court below through the impugned order, as against which the present revision has been filed.

3. Learned counsel for the petitioner would submit that, the earlier advocate, who appeared for the revision petitioner, since was not well, the revision petitioner had engaged another counsel and after having engaged another counsel, the matter has been entrusted to him. However, the newly engaged counsel also could not proceed with the matter by making arguments on four occasions between 10.04.2017 to 20.04.2017 and therefore, the appeal suit was dismissed for default.

4. The said non-cooperation on the part of the counsel engaged by the revision petitioner, who was the appellant in the suit, cannot be attributed to the revision petitioner, as she has engaged another counsel and entrusted the matter to get on with the case.

5. However, learned counsel for the respondents would submit that between 10.04.2017 and 20.04.2017, four hearings were given i.e., on 10.04.2017, 12.04.2017, 19.04.2017 and 20.04.2017, and in none of the above hearings, anyone had appeared on behalf of the revision petitioner, and therefore, after having given four chances within a period of one month, the appeal suit was dismissed for default. Therefore, the reason that the earlier counsel who suffered with illness, cannot be a reason for the petitioner and the delay of 339 days caused in filing the present application to restore the appeal suit, which was dismissed for default, has not been properly explained and therefore, the learned Judge having considered all these aspects, has rightly rejected the application and therefore, the impugned order does not require any interference.

6. I have heard the learned counsel for the petitioner and the learned counsel for the respondents, and also perused the materials placed on record, including the impugned order.

7. The non appearance on the part of the revision petitioner, who was the appellant before the first appellate Court on four hearings between 10.04.2017 and 20.04.2017, as has been rightly pointed out by the learned counsel for the petitioner, is not directly attributable to the revision petitioner, since she has already engaged a counsel.

8. In the circumstances, if at all any reason is attributable, it is only to the earlier counsel on record who was appearing for the revision petitioner. The revision petitioner / appellant could have been examined in this regard and without exploring the real reason for non appearance for the four hearings before the first appellate Court, the Court has proceeded to dismiss the petition.

9. Moreover, yet another reason viz., that there is a police complaint filed by the respondents against the petitioner on the alleged complaint that the petitioner threatened the respondents not to conduct the appeal suit. The said reason also weighed the mind of the learned Judge to take a decision against the revision petitioner.

10. However, the learned counsel for the revision petitioner would submit that, the revision petitioner is 70 years old and the question of giving any threat to the respondents may not arise at all and that too being a lady aged 70 years, she cannot be expected to give such a physical torture or threat on the respondents. Be that as it may. Now the issue is whether, the substantive right of the revision petitioner to get her share over the suit property for which the suit was filed for partition among the legal heirs, can be closed at the threshold, on technical reasons of delay in filing a restoration petition to restore the appeal suit, which was dismissed for default.

11. Such substantive right cannot be closed at the threshold for technical reasons. Therefore, this Court is of the view that the delay can be condoned, of course on costs, as the respondents have suffered to some extent because of the delay caused by the petitioner in approaching the Court in time.

12. In that view of the matter, this Civil Revision Petition is allowed and the order of the lower Court is set aside, on condition of payment of Rs.5000/- (Rupees Five Thousand Only) by the revision petitioner to the respondents, within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Judge, Mahila Court,
Perambalur.

+1 cc to M/s.A.Mohamed Ismail, Advocate Sr.No. 80884
+1 cc to M/s.Sarvabhauman Associates, Sr.No.80441

AKM/25.10.19/3P-4C /

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