

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(PD).No.3908 of 2014

M.Gajendran

.. Petitioner

Vs.

1.Sakunthala

2.Sukumar

3.Ravi

.. Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 07.08.2014 made in I.A.No.34 of 2014 in O.S.No.17 of 2010 on the file of the District Munsif cum Judicial Magistrate No.1, Walajapet.

For Petitioner : Mr.S.Gowri Shankar

For Respondents : No Appearance

ORDER

The present Civil Revision Petition has been filed to set aside the order and decretal order passed by the District Munsif cum Judicial Magistrate No.1, Walajapet dated 07.08.2014.

2. The petitioner had filed O.S.No.17 of 2010 the above suit for declaration of his right in the suit schedule property and for a permanent injunction. As there was no representation on behalf of the petitioner, the suit was dismissed for default on 11.10.2013. Therefore, the petitioner filed an application to restore the suit, dismissed for default vide I.A.No.34 of 2014 with a delay of 85 day. In the affidavit filed in support of the said application, the petitioner has stated that he did not receive communication from his counsel that the case was directed to be listed on 11.10.2013. Therefore, he did not attend and has therefore, blamed his counsel.

3. By the impugned fair and decretal order, the court below has dismissed the application for condonation of delay of 85 days in filing the application to set aside the order dated 11.10.2013 dismissing the suit for default on the ground that each and every days delay has not been explained by the petitioner.

4. Heard the learned counsel for the petitioner and there is no representation on behalf of the respondents.

5. In the said suit, the respondents had also filed their written statement and issues were framed.

6. In the affidavit filed, it was submitted by the petitioner that he came to know about the dismissal of the suit only when the respondents again started troubling the petitioner by giving false complaint before the police station and when the petitioner contacted his counsel, his counsel stated that due to over sight he was not informed.

7. No doubt the affidavit is vague and bereft of details, yet I find sufficient reasons to condone the delay of 85 days in filing the application for restoring the suit, as the petitioner may have a legitimate grievance to be redressed before the Court, Therefore, the present civil revision petition is allowed subject to payment of cost of Rs.10,000/- to the respondents /defendants.

8. It is made clear that the petitioner shall deposit the above cost to the credit of the above suit within a period of four weeks from the date of receipt of copy of this order. On such deposit, the respondents shall be entitled for a payment out on filing a memo through their counsel.

9. It is made clear that if the cost is not paid within the aforesaid period, this order shall automatically cease to have any effect.

C.SARAVANAN,J.

kkd

10. The District Munsif cum Judicial Magistrate No.1, Walajapet is directed to restore the suit and to complete the proceedings and pass orders on merits within a period six months from the date of receipt of copy of this order. No costs.

26.03.2019

Index :Yes/No
Internet :Yes/No
kkd

To

The District Munsif cum Judicial Magistrate No.1,
Walajapet.



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