

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2019

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.A.NO.2564 OF 2018 AND
C.R.P. (NPD) .NO.3479 OF 2018

1. Thangavel
2. Kalaichelvi

...Appellants/petitioners/
Plaintiffs in both the cases

-Vs-

1. Suseela
2. Sathish
3. karikalan

...Respondents/Respondents/
Defendants in both the cases

Prayer in C.M.A.No.2564 of 2018: The Civil Miscellaneous Appeal is filed under Order XLIII Rule 1 (c) of C.P.C. r/w Section 104 of Code of Civil Procedure, praying to set aside the fair and decretal order made in I.A.No.93 of 2018 in O.S.No.159 of 2013 dated 19.07.2018 on the file of the Sessions (Fast Track Mahila) Judge, Namakkal.

Prayer in C.R.P. (NPD) .No.3479 of 2018: The Civil Revision petition is filed under Section 115 of Code of Civil Procedure, praying to set aside the fair and decretal order made in I.A.No.92 of 2018 in O.S.No.159 of 2013 dated 19.07.2018 on the file of the Sessions (Fast Track Mahila) Judge, Namakkal.

For Appellants/petitioners: Mr.T.Dhanyakumar
in both the cases

For Respondents : Mr.C.Jagadish
in both the cases (for R1 and R2)
No appearance (for R3)

COMMON JUDGMENT

This Civil Miscellaneous Appeal and the Civil Revision petition are filed to set aside the orders passed in to set aside the fair and decretal orders made in I.A.Nos.92 and 93 of 2018 in O.S.No.159 of 2013 dated 19.07.2018 on the file of the Sessions (Fast Track Mahila) Judge, Namakkal.

2. The facts of the case are that the appellants/petitioners being plaintiffs filed a suit in O.S.No.159 of 2013 before the learned Principal District Court, Namakkal for cancellation of document No.94/2013 dated 11.01.2013. The suit was dismissed for default on 09.08.2017 due to the failure on the part of the plaintiff in commencement of trial.

3. The learned counsel for the respondents would submit that originally the suit was posted on 24.11.2016 for trial. Thereafter it was posted on many occasions from 04.01.2017 to 07.08.2017. But the appellants/petitioners/plaintiffs have not chosen to appear in person or through counsel for several hearings.. Therefore, the suit was dismissed for default on 09.08.2017.

4. Aggrieved against the order dated 09.08.2017, the appellants filed two interlocutory applications in I.A.Nos.92 and 93 of 2018 in O.S.No.159 of 2013 before the learned Sessions Judge (Fast Track Mahila), Namakkal to restore the petition which is dismissed as default on 09.08.2017 along with the petition to condone the delay of 65 days in representing the restoration petition. After contest, the learned Sessions Judge, Namakkal dismissed both the applications.

5. Aggrieved against the said orders dated 19.07.2018, the appellants/petitioners are before this Court by way of filing Civil Miscellaneous Petition as well as Civil Revision petition.

6. Heard the learned counsel appearing on either side in both the cases and perused the materials available on record.

7. Admittedly, in this case, since there was no appearance for the petitioner on several occasions, the Court below has dismissed the suit for default on 09.08.2019. Thereafter, the appellants have filed a restoration petition within the stipulated time. But due to some mistakes committed by the advocates who appeared for the same, the delay of 65 days has been occurred in representing the restoration petition. Without considering the facts and applying its mind properly, the Court below has simply dismissed the Interlocutory applications which is totally unaccepted by this Court. Time and again, this Court and the Hon'ble Supreme Court says that while considering the condone delay application, the Court should apply its mind and shall pass appropriate orders liberally.

8. The learned counsel for the respondents strongly opposed for allowing the Civil Miscellaneous appeal as well as Civil Revision petition on the ground that the appellants/petitioners/plaintiffs have not appeared before the

trial Court eventhough the matter was posted for trial on several occasions.

9. On a perusal of records, it is evident that the restoration petition was filed within the stipulated time but the delay of 65 days has been occurred for representation of the restoration petition alone which is very minimum as well as the mistake is on the part of the counsels who appeared before the lower Court. Therefore, in the interest of justice, this Court is inclined to allow both the cases.

10. In the result, the Civil Miscellaneous petition and the Civil Revision petition are allowed by setting aside the fair and decretal orders made in I.A.Nos.92 and 93 of 2018 in O.S.No.159 of 2013 dated 19.07.2018 on the file of the Sessions (Fast Track Mahila) Judge, Namakkal.

11. The trial Court is directed to restore the suit made in O.S.No.159 of 2013 and dispose of the same in accordance with law, on day to day basis without giving any adjournments to either of the parties, within a period of three months from the date of receipt of a copy of this order. Both the parties are directed to cooperate for early disposal of the same. No costs.

vum

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Sessions (Fast Track Mahila) Judge,
Namakkal.

+2cc to Mr.T.Dhanyakumar, Advocate, S.R.No.6314 & 6315/19

+2cc to Mr.S.Senthil, Advocate, S.R.No.5870 & 5871/19

C.M.A.No.2564 of 2018 and
C.R.P.(NPD).No.3479 of 2018

SR(CO)
kak(01/03/2019)