



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2019

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (MD) No.2252 of 2011

Marimuthu Moopanar

... Petitioner

vs.

Mohaideen Pitchaikani

... Respondent

Prayer:- This Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the order in I.A.No.844 of 2010 in O.S.No.110 of 2006 dated 14.06.2011 on the file of the learned Additional District Munsif, Tirunelveli.

For Petitioner : Mr.J.Ashok for
M/s.Ajmal Associates

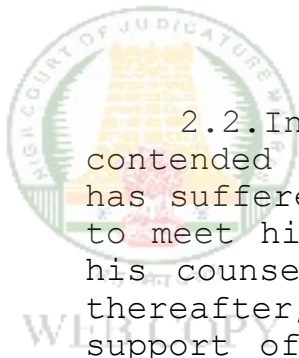
For Respondent : Mr.Mohaideen Pitchaikani

ORDER

The above Civil Revision Petition is filed challenging the order in I.A.No.844 of 2010 filed under Section 5 of Limitation Act, to condone the delay of 1438 days in filing the petition to restore the suit in O.S.No.110 of 2006, which was dismissed for default on 30.08.2006 by the learned Additional District Munsif, Tirunelveli.

2.The brief facts, which are necessary for disposing of the above revision petition, are as follows:

2.1.The revision petitioner/plaintiff, who is aged about 85 years, has filed a suit in O.S.No.110 of 2006 for recovery of Rs.42,316/- at the rate of 24% interest per annum from the defendants. The suit itself was dismissed for default on 30.08.2006 since the plaintiff had not taken necessary steps to serve the defendant though sufficient opportunity had been given to him. Though the said suit was dismissed for default on 30.08.2016 itself, the plaintiff has come forward with the application in I.A.No.844 of 2010 for restoration of the said suit with a delay of 1438 days.



2.2.In the said I.A., the revision petitioner/defendant mainly contended that at the time of dismissing the suit for default, he has suffered Type 2 Diabetics and due to the same, he was not unable to meet his counsel and only on 31.08.2010, when the defendant met his counsel, he came to know about the dismissal of the suit and thereafter, immediately he has filed the said application. In support of his contention, the plaintiff has produced the medical certificate before the Court below.

2.3.The learned I Additional District Munsif, Tirunelveli, after hearing arguments and perusing the records, had proceeded to dismiss the said application. Challenging the same, the defendant is before this Court.

3.From the records, it is seen that the plaintiff has filed the suit in O.S.No.110 of 2006 only in the Month of January 2006 and on account of his failure to pay batta, the said suit was dismissed for default on 30.08.2006, after a period of 7 months from the date of filing the suit. Further, it is seen that the medical certificate produced by the plaintiff has been issued only on 31.08.2010, before the filing of the impugned petition, which does not advance the case of the plaintiff and that the plaintiff has not come forward with sufficient cause for condoning the said delay. I do not find any infirmity in the impugned order passed by the learned Additional District Munsif, Tirunelveli.

4.Accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

To

The I Additional District Munsif,
Tirunelveli.

C.R.P. (MD) No.2252 of 2011
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