



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:25.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP.(MD).Nos.898 of 2012(PD)

Saravana Muthu

.. Petitioner/Petitioner/Plaintiff

Vs.

Mahalinga Nadar (Died)

1.Abborvakani

2.Narayanan

3.Kannan

4.Santhi

5.Murugeswari

6.Mageswari

.. Respondents/Respondents/
Defendants

PRAYER: This Petition filed under Article 227 of the Constitution of India to set aside the order dated 19.01.2012 in I.A.No.691 of 2011 in O.S.No.79 of 2010, on the file of the District Munsif Court, Sathankulam.

For Petitioner : Mr.R.Vijaya Kumar

For R1 to R5 : No Appearance

For R6 : Dismissed for default
vide Court order dated 24.08.2015

O R D E R

This Civil Revision Petition has been filed against the order passed by the Court below dismissing the application filed by the petitioner to set aside the order of dismissal for default.

2.The petitioner is the plaintiff in the suit. The petitioner filed a suit seeking for the relief of declaration of title and recovery of possession. This suit came to be dismissed for default on 10.12.2011. Immediately on 13.12.2011, a petition came to be filed for restoration of the suit in I.A.No.691 of 2011. This petition was allowed by the Court below subject to the condition that the petitioner, should pay a cost of Rs.100/- to the respondents on or before 11.01.2012. Failing which the petition will stand dismissed automatically.



3.The petitioner attempted to pay cost to the respondents and they refused to receive the same. Therefore, a memo came to be filed before the Court below on 11.01.2012, informing the Court that the respondents are refusing to receive the cost and therefore, permission must be granted to the petitioner to deposit the cost in the Court. For this memo, challan itself was issued only on 12.01.2012. The petitioner filed a memo before the Court below on 19.01.2012, informing the Court as to why the petitioner was not able to pay the cost within the time stipulated by the Court.

4.The Court below after considering the memo has proceeded to reject the memo and consequently, the petition for restoration also came to be dismissed.

5.The learned counsel appearing for the petitioner submitted that there was absolutely no fault on the part of the petitioner for not paying the cost on time. The conditional order was passed by the Court below on 06.01.2012 and the cost was directed to be paid on or before 11.01.2012, to the respondents. The respondents refused to receive the cost and therefore, a memo was filed before the Court and a challan was received for depositing of the cost only on 12.01.2012. Therefore, there was no intention on the part of the petitioner to delay the deposit of cost and the Court below ought to have restored the suit on file and proceeded further with the suit on merits.

6.The respondents have been served with the notice and their names have also been printed in the cause list and there is no representation for the respondents.

7.Taking into consideration the facts and circumstances of the case, this Court is of the considered view that the Court below took a very hypertechnical view and un-necessarily dismissed the petition filed for restoration of the suit. The petition was filed within a period of three days from the date of order and the respondents had refused to receive the cost. Therefore, the petitioner had to necessarily pay the cost after obtaining a lodgment schedule. These are the cases, where the Courts need to be more lenient and should not stand on technicalities. By dismissing this application in the year 2012, the petitioner has been prevented from proceeding further with the suit on merits, for the last seven years.



8.This Court has absolutely no hesitation to interfere with the order passed by the Court below and the order passed by the Court below in I.A.No.691 of 2011, dated 19.01.2012, is hereby set aside. The suit is restored on file and the Court below is directed to complete the proceedings in O.S.No.79 of 2010, within a period of three months from the date of receipt of a copy of this order and accordingly, the Civil Revision Petition stands allowed. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

tsg

To

1.The District Munsif Court, Sathankulam.

2.The Record Keeper,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1CC TO MR.R.VIJAYAKUMAR, Advocate Sr. No.89437

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25.09.2019

KG(CO)

TR(16.10.2019) 3P 5C