



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2019
(Reserved on 01.08.2019)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (NPD) (MD)No.1157 of 2019
and
C.M.P (MD)No.6250 of 2019

B.Dhanalakshmi (Died)
B.Murugesan

... Petitioner/ Petitioner/
Defendant

vs.

1)V.Vinayagamoorthi
2)V.Karthika
3)B.Kannan

... Respondents/ Respondents/
Plaintiffs

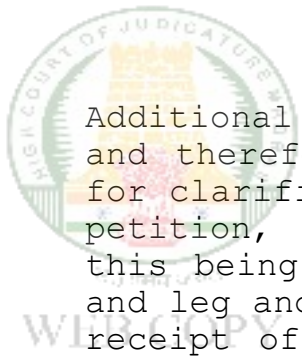
Petition filed under Section 115 of the Civil Procedure Code, against the order and decreetal order passed by the learned IV Additional District Judge, Madurai, made in I.A.No.689 of 2016 in O.S.No.170 of 2008 dated 15.03.2019.

For Petitioner : Mr.A.Jayaramachandran
For R1 & R2 : Mr.P.Thilakkumar

ORDER

This revision petition has been filed against the dismissal of the condone delay petition to condone the delay of 326 days in filing the petition to set aside the exparte order passed in O.S.No.170/2008 dated 31.08.2015.

2.The case of the petitioner is that his mother was the defendant in the main suit and the suit has been filed by the respondents/plaintiffs for specific performance. After the cross examination of PW1, the defendant filed a petition to recall PW1 and an application was also filed to implead the Co-operative Society and State Bank of India, RASMECC Branch, Madurai, which was allowed. Thereafter, the defendant has filed a petition in TR.CMP.No.264 of 2012 before this Court to transfer the above suit from the file of the VIth Additional District Court to some other Court and the same was allowed as per the order dated 20.02.2013 and the case was transferred to the IVth Additional District Court, Madurai. The IVth



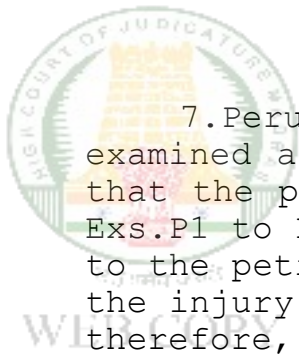
Additional District Court, Madurai, sought for some clarification and therefore, the defendant filed a petition in M.P.No.1 of 2015 for clarification and due to the pendency of the above clarification petition, O.S.No.170 of 2008 was adjourned then and there. When this being the situation, the defendant sustained fracture in hand and leg and therefore, she could not contact the counsel and only on receipt of the summon in the execution petition in December 2015, the defendant came to know that on 13.08.2015, while the suit was posted for defendant side evidence, she was called absent and was set exparte and exparte decree came to be passed on 31.08.2015. Thereafter, the case bundle was collected from the earlier counsel and the new counsel was appointed who filed the petition to condone the delay. According to the petitioner, due to old age of the defendant and her inability due to fracture, there was a delay of 326 days in filing the petition to set aside the exparte decree which was dismissed against which, the present revision petition has been filed.

3.Learned counsel for the petitioner would submit that on receipt of the EP notice, though the petitioner's mother was bedridden, she has given vakalat to her counsel to appear in E.P and also after collection of case bundle from the earlier advocate, the petition to set aside the exparte order was filed on 21.08.2016. Subsequently, during the pendency of the petition itself, she passed away bedridden and therefore, the above delay occurred. Thus, he would pray for allowing the revision petition.

4.Learned counsel for the respondents would deny the contention made by the learned counsel for the petitioner and would also deny the illness. He would state that though in the E.P., the defendant appeared on 27.01.2016, she did not take steps to file petition to set aside the exparte decree and as there was no pleading as to the delay in filing the petition to set aside the exparte decree, he would state that the defendant has wantonly not appeared before the court and therefore would pray for dismissal of the above revision petition.

5.Heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

6.Perusal of record shows that the mother of the petitioner was aged 70 years old and she had been effectively conducting the case and only after her accident of falling down in the bathroom, she was not able to conduct the case effectively. It is also seen that while the petition to set aside the exparte decree was pending, she passed away. Subsequently, the revision petitioner who is the son got impleaded and ultimately the above petition was dismissed and as the suit property is a dwelling house, learned counsel for the petitioner would pray for contesting the case on merits.



7.Perusal of record further shows that PWs 1 to 3 were cross examined as early as on 03.09.2012 and from the above, it is clear that the petitioner's mother has effectively conducted the suit and Exs.P1 to P7 are the medical records relating to the treatment given to the petitioner's mother and it is also not in dispute that due to the injury sustained by the petitioner's mother, she passed away and therefore, in my considered opinion, in the present circumstances of the case, the finding of the learned Judge that there was no explanation from the date of appearance in the EP, cannot be sustained and therefore, to meet the ends of justice, the learned Judge ought to have given one more opportunity to the petitioner to contest the case on merits. Therefore, I am inclined to interfere with the order passed by the learned Judge.

8.Accordingly, the order dated 15.03.2019 passed in I.A.No.689 of 2016 in O.S.No.170 of 2008 by the Court below is set aside and the learned Judge is directed to dispose of the suit on merits within a period of four months from the date of receipt of a copy of this order.

With the above direction, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

The IVth Additional District Judge,
Madurai.

+2 CC to M/s.A.JAYARAMACHANDRAN, Advocate SR-87448 & 87332

order made in
C.R.P(NPD) (MD)No.1157 of 2019
18.09.2019

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MS/03.10.2019/3P.4C