



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

WEB COPY

C.R.P (MD)No.1830 of 2019

Rani

... Petitioner / Petitioner / Plaintiff

Vs.

Karuppiyah(died)

1. Lakshmi

2. Minor Kayalvizhi

3. Minor Gayathri

4. Minor Poovizhi

(Minor respondents 2 to 4 represented
through their natural guardian 1st respondent
viz., Lakshmi)

... Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order passed by the learned District Munsif, Aranthangi in I.A.No. 1175 of 2017 in O.S.No. 163 of 2010, dated 02.08.2018.

For Petitioner : Mr. N. Balakrishnan

For respondents : Mr. M.Suresh

ORDER

The Civil Revision Petition has been filed against the dismissal of the application in I.A.No. 1175 of 2017 in O.S.No. 163 of 2010, dated 02.08.2018 filed by the revision petitioner, to condone the delay of 421 days by setting aside the order dated 27.06.2016, passed by the learned District Munsif, Aranthangi, and to restore the suit, which was dismissed for default.

2. The revision petitioner herein, who is the plaintiff in the suit in O.S.No. 163 of 2010, has filed a suit for recovery of possession / eviction. During the pendency of the suit, the sole defendant passed away. Therefore, the matter was posted for ex parte evidence. The revision petitioner / plaintiff came to know about the death of the sole defendant and she seeks time for impleading the LRs. However, the revision petitioner was not able to find out the LRs and she was also suffered from Jaundice for a long time and apart from that, she has shifted her residence from Mannargudi due to her livelihood. In view of that, she was not able to conduct the case and give appropriate instructions to her counsel. Further, the reason for non approaching the Court is that she was not able to find out the LRs to implead in the suit, however, the Court below dismissed the suit for default on



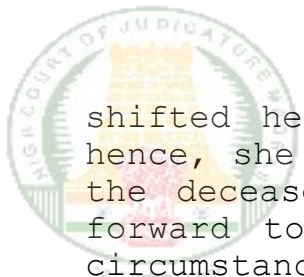
27.06.2016. Hence, she has filed an application in I.A.No.1175 of 2017 for condoning the delay of 420 days in filing the petition for restoration, under Section 5 of the Limitation Act. However, the respondents opposed that the delay was not properly explained. The Court below dismissed the Interlocutory Application holding that the petitioner has not explained the reason for the delay. Further, the court below has not accepted the reason of the Jaundice and the change of her house from Mannargudi and dismissed the application. Under these circumstances, challenging the above said order, the revision petitioner herein filed the present Civil Revision Petition before this Court.

3. The learned counsel appearing for the revision petitioner would contend that the revision petitioner was suffered from Jaundice and shifted her residence for his livelihood from Mannargudi. Further, after the death of the sole defendant, the revision petitioner was not able to get the information about the LR's. Due to the above reasons only the revision petitioner was not able to approach the Court below, after the suit was dismissed for default on 27.06.2016. He further contended that if there was no LR's for the sole defendant, there is no need to continue the suit and without the availability of the particulars of the LR's, only, she was not in a position to approach the counsel to restore the suit. Once she came to know about the particulars of LR's, immediately, she filed the above application with a delay of 421 days. He further contended that there is no justification in dismissing the application, though the Court below referred various Judgments of Hon'ble Apex Court. Therefore, he contended that the dismissal of the application is unwarranted and prayed for allowing this Civil Revision Petition.

4. On the other hand, the learned counsel appearing for the respondents would contend that in order to condone the delay, the revision petitioner has not examined any witness for proving the Jaundice and shifting of her work place from Mannargudi. He further contended that even the Supreme Court has rejected the application for condoning the delay of 12 days for not assigning valid reason. There is no error in dismissing the application to condone the delay of 421 days and the order passed by the Court below is just and fair and thus, prayed for dismissal of this Civil Revision Petition.

5. I have heard the learned counsel appearing for either side and perused the materials available on record.

6. The revision petitioner / plaintiff, who is the owner of the property, has filed the suit for recovery of possession, against the sole defendant, due to the non payment of agreed rent. Pending suit, the sole defendant passed away. Since the revision petitioner failed to inform the Court below about the death of the sole defendant, she requested time to implead the LR's. Due to non impleadment of LR's, the said suit was dismissed for default on 27.06.2016. The reasons stated by the revision petitioner in the



shifted her working place from Mannargudi for her livelihood and hence, she was not able to trace out the particulars of the LRs of the deceased sole defendant. Further, the LRs are also not come forward to implead themselves as LRs of their father. In such circumstances, the relief of recovery of possession by the plaintiff does not arise, when the sole defendant was passed away. The plaintiff without impleading the LRs cannot proceed the case. One of the reasons stated in the application was that due to non availability of the particulars of LRs, the revision petitioner was not able to approach the Court below in time. This Court is of the view that the said reason can be accepted as genuine one. The Court below has not considered all these reasons in proper manner. It should have considered the other aspects also with regard to the failure on the part of the LRs to come forward and implead themselves before the Court below. In the present case, there is failure on the part of the respondents also. In such circumstances, the LRs before this Court have no *locus standi* in defending the application on the ground that each and every delay needs to be explained. Therefore, the dismissal of application to condone the delay is totally unwarranted and the same is liable to be set aside in the interest of justice and accordingly, the order passed by the Court below in I.A.No. 1175 of 2017 in O.S.No. 163 of 2010, dated 02.08.2018 is set aside. The Court below is directed to number the restoration petition and to restore the suit on file within a period of one week from the date of receipt of a copy of this order. Since the suit is of the year 2010, this Court directs the Court below to conduct the trial on day-to-day basis and dispose of the same as expeditiously as possible, in any event, not later than Eight months thereafter.

7. This Civil Revision Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

THE DISTRICT MUNSIF, ARANTHANGI.

+1 CC to M/s.M. SURESH, Advocate (SR-99702[F] dated 20/11/2019)

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trp

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