



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2019

CORAM:

THE HONOURABLE **MR. JUSTICE S.S.SUNDAR**

C.R.P (MD) (NPD) No.1414 of 2013

Subbuthai

... Petitioner

Vs.

Subbiah

... Respondent

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., to set aside the order passed by the Principal Subordinate Judge, Trichy in C.M.A.No.2 of 2009, dated 16.10.2008,

For Petitioner : Mr.K.Prabhakar
For Respondent : No Appearance

ORDER

This Civil Revision Petition is directed against the order of the learned Principal Subordinate Judge, Trichy in C.M.A.No.2 of 2009, dated 16.10.2008.

2.The revision petitioner, as plaintiff, filed a suit in O.S.No.319 of 2004 before the District Munsif Court, Manaparai, against the respondent herein, for recovery of a sum of Rs.81,560/- with 12% interest. After filing the written statement, the said suit came up for trial. Since the petitioner failed to appear on few dates of hearing, the suit itself was dismissed for default on 30.09.2005. It is stated that an application to restore the suit was filed on 08.10.2005. However, the said application was numbered as I.A.No.429 of 2008, due to administrative reason. However, the trial Court dismissed the petition on the ground that the petition is filed belatedly, two years after the suit was dismissed for default and that the petition to restore the suit on file cannot be entertained, as no reason has been stated for the delay of two years. Aggrieved by the order of the trial Court, the revision petitioner preferred an appeal in C.M.A.No.2 of 2009 on the file of the Principal Subordinate Court, Trichy.

3.Since the suit was posted on few occasions earlier and it was adjourned at the instance of the revision petitioner, the lower appellate Court has held that the petitioner had not diligently prosecuted the suit, despite several opportunity has been given to the revision petitioner for prosecuting the suit and dismissed the appeal. As the appeal was dismissed, the revision petitioner, against the concurrent orders of the lower Courts, the above civil revision petition has been filed.



4.The learned Counsel for the petitioner submitted that absolutely there is no delay and the delay was not on the part of the petitioner, either in filing the petition or in prosecuting the matter diligently. It is further stated that the petition to restore the suit was filed on 08.10.2005 without any delay and that due to transfer of case bundles, the petition filed by the petitioner was not put up with the original bundle. It is further stated that the delay either in numbering the petition or hearing the petition for restoration of the suit is not due to any negligence or dilatory tactics adopted by the petitioner. It is further stated that the Courts below have not applied their mind and dismissed the application for restoration of the suit, only on the ground of delay, ignoring the fact that the application was promptly filed within 8 days, after the suit was dismissed for default.

5.Since the Courts below have not considered the relevant facts and erroneously came to the conclusion that the petitioner had not diligently conducted the case, the learned Counsel for the petitioner further submitted that the revision petition is liable to be allowed.

6.Despite notice to the respondent and the sole respondent is represented by a Counsel, today, there is no representation for the respondent.

7.This Court considered the order passed by the Courts below as well as the submissions of the learned Counsel for the revision petitioner. The Courts below have proceeded on the wrong footing that there was a delay in filing the petition to restore the suit on file. Though the Courts below have observed that the delay in filing the petition was on account of the conduct of the petitioner, no material is relied or considered to come to the conclusion that the petitioner is not diligently prosecuted the suit. The petitioner had an explanation as to why he could not appear for trial, when the matter was called on 30.09.2005. There is no reason to reject the contention stated by the petitioner for his non-appearance on the date, when the suit was called and dismissed for default. Absolutely, there is no delay in filing the application. Hence, there is no negligence that can be attributed to the delay or any inconvenience that is caused to the respondent.

8.This Court has repeatedly held that some lenience should be shown to the litigants by giving sufficient opportunity to contest or prosecute the case on merits and in that view of the matter, this Court is unable to sustain the order of the Courts below and hence the order of the learned Principal Subordinate Judge, Trichy in C.M.A.No.2 of 2009, dated 25.08.2012, confirming the order of the learned District Munsif, Manaparai, in I.A.No.429 of 2008 in O.S.No.319 of 2004 is set aside and the application in I.A.No.429 of 2008 in O.S.No.319 of 2004 stands allowed. The learned District Munsif, Manaparai, is directed to expedite the trial and dispose of the suit in O.S.No.319 of 2004 preferably



within a period of six months from the date of receipt of a copy of this order.

9. Accordingly, the Civil Revision Petition is allowed. No costs.

WEB COPY

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

cmr

To

1. The Principal Subordinate Judge, Trichy.

2. The District Munsif, Manaparai.

C.R.P (MD) (NPD) No. 1414 of 2013
26.04.2019

SAR (CO)

TR (10.05.2019) 3P 3C