

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) No. 1419 of 2018

Vasantha

..Petitioner

Vs.

R.Sankaran

..Respondent

Prayer: Petition filed under Section 115 of C.P.C, against the fair and decretal order dated 28.11.2017 passed in I.A.No. 527 of 2017 in O.S.No. 106 of 2013 on the file of the District Munsif Court, Tiruvarur.

For Petitioner : Mr.N.Muthukumaran

For Respondent : No Appearance

O R D E R

This Civil Revision Petition is directed against an order of the District Munsif, Thiruvavur made in I.A.No.527 of 2017 dismissing the said application filed by the petitioner seeking condonation of delay of 155 days in filing the application for restoration of the suit that was dismissed for default.

2. The suit was laid by the petitioner / plaintiff seeking declaration that the agreement of sale dated 11.09.1998 executed between the defendant and the plaintiff's late husband, G.Karunanidhi is unenforceable having become barred by limitation and for a consequential injunction restraining the defendant and his men from in any manner interfering with the plaintiff's peaceful possession of the suit property.

3. It appears that suit was posted for trial on 05.12.2016 and since the plaintiff was not present, the suit was dismissed for default. The plaintiff came out with the application in I.A.No. 527 of 2017 seeking to condone the delay of 155 days in filing the application. The application was filed on sometime in June 2017.

4. According to the petitioner, she suffered from blood pressure, diabetes and knee pain and she was undergoing treatment. It is also stated that she had undergone cataract surgery for both eyes and therefore, she could not appear before the Court on 05.12.2016. The petitioner herself was examined as a witness. She deposed regarding the illness pleaded by her and she also produced medical certificates and prescriptions numbering about seven. There was no contra evidence on the side of the respondents.

5. The learned District Munsif who heard the application concluded that the cataract surgery had been done sometime between June and September 2016 and there was no evidence to show that the petitioner was under going treatment during December 2016 and subsequent thereto.. On the said conclusion, the learned District Munsif dismissed the application. Aggrieved, the petitioner has come up with this Civil Revision Petition.

6. I have heard Mr.N.Muthukumaran, learned counsel for the petitioner. None appears for the respondent. Even on 22.07.2020 there was no representation for the respondent.

7. Mr.N.Muthukumaran, learned counsel for the petitioner would contend that the Trial Court was wrong in taking a hyper technical view and dismissing the application for condonation of delay of 155 days in seeking to set aside the exparte decree. No doubt, the petitioner should explain everyday's delay. The Hon'ble Supreme Court has repeatedly pointed out, that Court should not adopted a hyper-technical approach in matters of delay if it is shown that there was nonegligence on part of the defaulting party. The Courts must always condone the delay so that the dispute can be resolved on merits. In Delhil University Vs. Union of India reported in 2019 SCC online 1634 the Hon'ble Supreme Court has observed as follows:-
"From a consideration of the view taken by this Court through the decisions cited supra the position is clear that, by and large, a liberal approach is to be taken in the matter of condonation of delay. The consideration for condonation of delay would not depend on the status of the party namely the Government or the public bodies so as to apply a different yardstick but the ultimate consideration should be to render even-handed justice to the parties".

In the case on hand, the petitioner has examined herself as P.W.1 and has produced medical records to show that she was under treatment. The fact that she had underwent a cataract surgery between June and September 2016 is also not denied.

8. Considering the overall preponderance of probabilities, I am of the considered opinion that the petitioner has made out a sufficient cause for condonation of delay. I find that the Trial Court has adopted a very strict and hyper technical approach, where the delay is not much. No prejudice would cause to the respondent by condonation of delay. I find the petitioner will be greatly prejudiced if the suit is not restored. Hence, the order of the Trial Court is set aside, the delay of 155 days in filing the application for restoration is condoned, I.A.No.527 of 2017 will stand allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:-

The District Munsif Court, Tiruvarur.

2. The Section Officer, V.R. Section,
Madras High Court, Chennai.

+lcc to Mr.N.Muthukumaran, Advocate in Sr.No.25800

C.R.P(NPD)No. 1419 of 2018

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