

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 03.11.2020	Delivered on: 19.11.2020
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THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRP(NPD).No.347 of 2015

Baskar ... Petitioner

Vs.

Padmavathy ...Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the order dated 05.08.2014 passed in I.A.No.632 of 2012 in O.S.No.85 of 2010 on the file of the Additional Sub-Court, Tiruvannamalai.

For Petitioner : Ms. J.Prithivi for

Mr.A.K.Kumarasamy,
Senior Counsel

For Respondent : Mr.D.Govindha Reddy

ORDER

This Civil Revision Petition has been filed by the Petitioner/Plaintiff against the dismissal of his Application in I.A.No.632 of 2012 in O.S.No.85 of 2010 on the file of the Additional Sub-Judge, Tiruvannamalai, dated 05.08.2014.

2.The Petitioner herein had filed an Application in I.A.No.632 of 2012 in O.S.No.85 of 2010 on the file of the Additional Sub-Judge, Tiruvannamalai under Section 5 of the Limitation Act, to condone the delay of 202 days in filing a petition to restore the suit which was dismissed for default. The learned Additional Sub-Judge, Tiruvannamalai by the order dated 05.08.2014 had dismissed the said application. Feeling aggrieved, the Petitioner/Plaintiff has filed the present Civil Revision Petition.

3.Heard Ms.J.Prithivi for Mr.A.K.Kumaraswamy, learned Senior counsel for the Petitioner and Mr.D.Govindha Reddy, the learned counsel appearing for the Respondent.

4.The learned counsel for the Petitioner has submitted that the Petitioner herein had filed a suit in O.S.No.85 of 2010 on the file of the Additional Sub Judge, Tiruvannamalai for the relief of specific performance of the sale agreement dated 14.9.2007 by paying huge Court fee of Rs.22,500/-. She further submitted that when the said suit was posted for Trial, the Petitioner was suffering from Jaundice and hence he could not appear before the Trial Court. Consequently, the Trial Court had dismissed the suit for default on 16.02.2012. She further submitted that the Petitioner after recovering from the said illness, filed a petition to restore the suit with a petition under Section 5 of the Limitation Act, to condone the delay of 202 days. She further submitted that the learned Trial Court Judge had dismissed the said petition by holding that the Petitioner has not produced any material to show that he took treatment for any ailment. She further submitted that since the petitioner was suffering from Jaundice and he took treatment from local persons, he could not produce any proof to show his illness. She further submitted that the Trial Court had failed to see that the expression “sufficient cause” within the meaning of Sectionn 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.

She further submitted that the petitioner is having a good case and hence an opportunity may be given to the Petitioner to conduct a case and therefore she prayed to allow the Civil Revision Petition and set aside the order passed by the learned Additional Sub-Judge, Tiruvannamalai and allow the Application in I.A.No.632 of 2015 in O.S.No.85 of 2010.

5. Per contra, the learned counsel for the Respondent has submitted that the reason stated by the Petitioner for not appearing before the Trial Court is false, because during the relevant period, he was appearing before the Principal Sub-Court, Tiruvannamalai, for conducting two cases. He further submitted that the petitioner has filed a vexatious suit. Subsequently, he allowed the said suit for dismissal. He further submitted that the petitioner has not produced any material before the Court to show that he was suffering from Jaundice and taking into consideration the aforesaid facts, the Trial Court has rightly dismissed the petitioner's application and in the said order, this Court need not interfere and therefore he prayed to dismissed the Civil Revision Petition.

6.This Court has carefully considered the rival submissions made by the both side Counsel and also the materials filed along with this Civil Revision Petition.

7. A Perusal of the typed set of papers filed by the petitioner would show that the petitioner herein had filed a suit in O.S.No.82 of 2010 on the file of the I Additional Sub Judge, Tiruvannamalai for the relief of specific performance of the sale agreement dated 14.09.2007 and alternatively to grant decree to return the sale consideration of Rs.3,00,000/- with interest at the rate of 12% p.a,. The respondent/defendant entered into appearance and filed a written statement stating that for the purpose of obtaining loans, he approached the plaintiff's father Mr.Mahalingam and the said Mr.Mahalingam gave a sum of RS.3,00,000/- as loan and insisted her to execute a mortgage deed and on believing his words, she signed in the alleged sale agreement, but only subsequently she came to know that the said Mahalingam has obtained the suit sale agreement by playing fraud and misrepresentation.

8. On the said pleadings, the Trial Court has framed the necessary

issues and posted the matter for Trial. When the suit was posted for Trial on 16.02.2012, the petitioner did not appear and hence the suit was dismissed for default. Subsequently, the petitioner/plaintiff has filed an application to restore the suit along with an Application in I.A.No.632 of 2012 under Section 5 of the Limitation Act to condone the delay of 202 days in filing the petition to restore the suit stating that he was suffering from Jaundice and hence he could not appear before the Trial Court on hearing dates and only after recovering from the said illness he filed restoration petition along with a petition to condone the delay of 202 days. The respondent opposed the said petition by filing counter. In the said counter also, she has narrated the facts which were mentioned in the written statement. Further, she denied the contention of the petitioner that he was suffering from Jaundice. She further stated that the petitioner, during the relevant period was conducting two case before Principal Sub-Court, Tiruvannamalai. But she has not produced any material to show that the petitioner was appearing before the Principal Sub-Court, Tiruvannamalai, during the aforesaid period.

9. It is also to be pointed out that in the impugned order, the learned Additional Sub-Judge, Tiruvannamalai, has stated that the suit was posted in the list on 01.02.2012; On that day, the plaintiff was absent. The case was adjourned to 08.02.2012, On that day also, the plaintiff was absent. Again the case was adjourned to 16.02.2012. On that day also, plaintiff was absent and hence the suit was dismissed for default but nowhere he has stated that on the aforesaid dates, the respondent/defendant appeared before the Trial Court. In the counter statement also, the respondent has not stated that on those hearing dates, she appeared before the Trial Court.

10. Taking into consideration, the aforesaid facts and also the fact that the petitioner's valuable right is involved in this case, and also the fact that the respondent has admitted in her written statement and also in the counter statement that she received a sum of Rs.3,00,000/- from the petitioner's father, this court is of the view that some leniency can be shown to the petitioner by imposing conditions.

11. In the result, this Civil Revision Petition will be allowed on payment of cost of Rs.3,000/-(Rupees Three Thousand Only) to the respondent/defendant either directly or through the counsel who appeared for her before the trial court within a period of three weeks from the date of receipt of a copy of this order, failing which, this Civil Revision Petition shall stand dismissed automatically without further reference to this Court. If the petitioner complies with the aforesaid condition within the aforesaid period, the Trial Court is directed to allow the application in I.A.No.632 of 2013 and thereafter number the petition to restore the suit and dispose of the same in accordance with law.

.11.2020

Index :Yes/No

Speaking/Non-speaking Order

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Note: Issue order copy on or before 23.11.2020.

To

The Additional Sub-Court,
Tiruvannamalai.



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P.RAJAMANICKAM, J.



**Pre-Delivery Order in
CRP(NPD).No.347 of 2015**

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