

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 2149 of 2018

Subramanian

...Petitioner/Plaintiff

Vs.

V.Thavasaiya

..Respondent/Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order made in I.A.No.87 of 2017 in O.S.No. 9 of 2013 dated 26.10.2017 on the file of the Sub-Court, Mannargudi.

For Petitioner : Mr.S.Chandrasekaran

For Respondent : Mrs.M.Meenatchi

O R D E R

The plaintiff in O.S.No. 9 of 2013, aggrieved by an order dismissing the application to condone the delay of 139 days in filing a petition to restore the suit that was dismissed for default has come up with this revision.

2. The said suit was laid by the plaintiff seeking specific performance of an agreement of sale deed dated 10.10.2011. The suit which was posted in the special list earlier was dismissed for default and restored upon the application in I.A.No. 358 of 2015 and again the suit was posted in the list on 02.08.2016. Since there was no representation on the side of the petitioner / plaintiff, the suit came to be dismissed for default. Therefore, the plaintiff came up with an instant application in I.A.No. 87 of 2017 seeking condonation of delay of 139 days in filing an application to restore the suit that was dismissed for default on 02.08.2016. The said application was opposed contending that the reasons assigned are not true and even if true it would not amount to sufficient cause within the meaning of Section 5 of the Limitation Act. The Trial Court, on the consideration of the facts and circumstances of the case and taking into account the previous default, dismissed the application for condonation of delay.

3. I have heard Mr. S.Chandrasekaran, learned counsel for the petitioner and Mrs.M.Meenatchi, learned counsel for the respondent.

4, Mr.S.Chandrasekaran, learned counsel for the petitioner would submit that the suit being one for specific performance, the petitioner should be given an opportunity to prosecute the suit on merits. He would also fault the Trial Court for taking into account the previous default.

5. Contending contra, Mrs.M.Meenatchi, learned counsel for the respondent would submit that the reasons assigned cannot be termed as sufficient cause within the meaning of Section 5 of the Limitation Act. She would also submit that the plaintiff is attempting to take advantage of the usual reason namely, suffering from jaundice to cover up the default. I have considered the rival submissions.

6. The suit is one for specific performance. As per the agreement, it is seen that the plaintiff has paid an advance of Rs.3,00,000/-. The agreement is also registered one. Therefore, it cannot be said that the plaintiff has a very weak case or no case at all in the suit. The reason assigned for the delay is that the petitioner was suffering from jaundice. It cannot be assumed that the reason is false in as much as the plaintiff would lose more by delaying the proceedings than what he would stand to gain.

7. Considering the length of the delay, I am of the opinion that the Trial Court was not right in adopting a very strict view and dismissing the application. This Court and the Hon'ble Supreme Court have been repeatedly pointing out that the prior conduct or prior default cannot be taken into account to dismiss the application for restoration or setting aside the exparte decree or for condonation of delay.

8. In view of the above, the order of the Trial Court cannot be sustained. This civil revision petition is allowed, the order of the Trial Court dismissing I.A.No.87 of 2017 is set aside, the delay of 139 days in filing the application for restoration is condoned. The Trial Court is directed to number the application for restoration and proceed with it in accordance with law.

s/d-

Assistant Registrar(CO)

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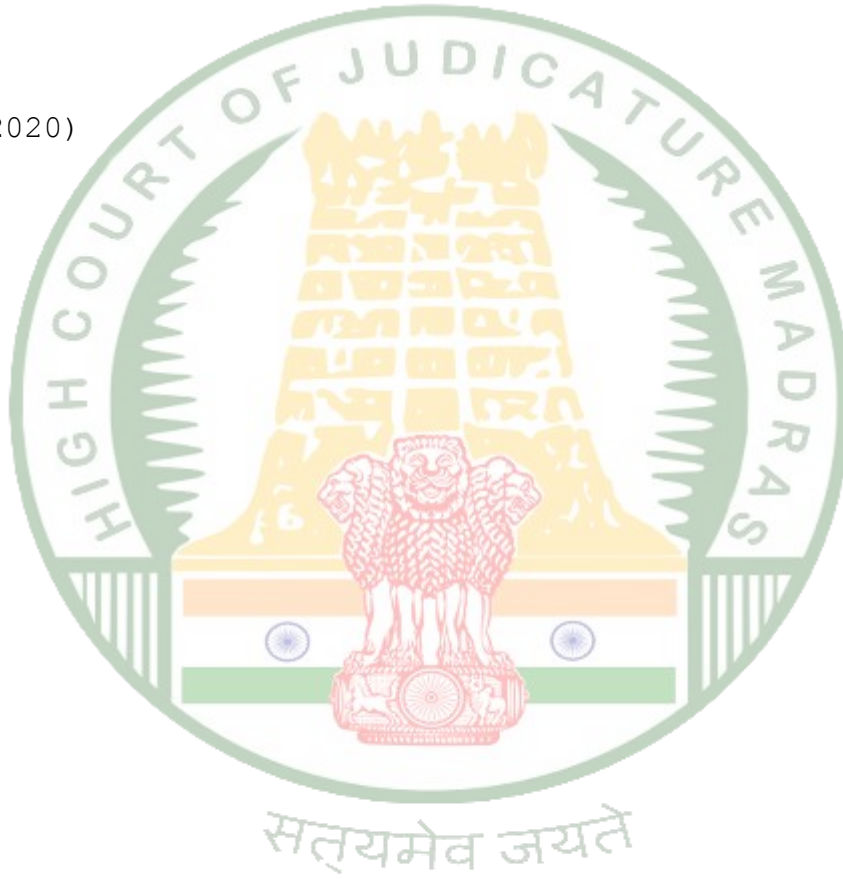
Sub-Assistant Registrar

To:-

The Subordinate Judge
Mannargudi.

C.R.P.No. 2149 of 2018

KK (CO)
SP (06/10/2020)



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