

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.487 of 2018

Rajalakshmi

... Petitioner

Vs

1. C.Amudha

2. S.Pannerselvam

... Respondents

Prayer: The Civil Revision petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the order dated 04.10.2017 passed in IA No 458 of 2017 in OS No 83 of 2014 on the file of District Munsif Court, Vaniyambadi.

For Petitioner : Mr.P.Jagadeesan

For Respondents : No appearance

ORDER

I have heard Mr.P.Jagadeesan, learned counsel appearing for the petitioner. Despite several adjournments, the counsel for the respondents is

consistently absent.

2. The revision is against an order refusing to condone delay of 103 days in filing an application to restore the suit which was dismissed for default. The suit is one for declaration of title and recovery of possession. It appears that the suit was adjourned and posted for trial on 22.03.2017, on which date, it was dismissed for default. Claiming that there was an error in the E-Court website and the entry relating to the posting of the suit on 22.03.2017 for trial, was not reflected therein and an application under Order 9 Rule 9 of the Code filed in G.No.1884 of 2017 as early as on 21.04.2017 was misplaced by the Court, the petitioner sought for condonation of delay of 103 days in filing the application to restore the suit.

3. The application was resisted by the respondents contending that the petitioner is a habitual defaulter and the suit which was already dismissed on 17.11.2014 and was restored on 03.11.2015 and despite repeated adjournments, the petitioner was not ready to commence the trial.

4. The learned trial Judge, concluded that the petitioner is guilty of delaying the trial and the reasons assigned are not satisfactory. Upon such conclusion, the application was dismissed.

5. Mr.P.Jagadeesan, learned counsel appearing for the petitioner would vehemently contend that the trial Court was not right in taking into account the earlier default. He would also submit that the trial Court must have considered the reasons for the delay in the right perspective instead of taking into account the earlier defaults on the part of the petitioner. This Court as well as the Hon'ble Supreme Court have consistently held that in the matters of delay, the Court shall not look into the earlier default which has already been condoned. The delay is only 103 days. In fact, the petitioner in the affidavit had stated that an application in G.No.1884 of 2017 was filed within time that is on 21.04.2014. The learned trial Judge has not adverted to the said aspect at all. If the Court office has misplaced the papers, the Court must then be more magnanimous in condoning the delay.

6. In view of the above, the order of the trial Court is set aside and the Civil Revision petition is allowed. The delay of 103 days in filing the application to restore the suit is condoned. The trial Court is directed to number the application under Order IX Rule 9 of Code of Civil Procedure and dispose it of in accordance with law. No costs.

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vum

Index: Yes/No

Speaking order / Non speaking order

To

The District Munsif Court, Vaniyambadi

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R.SUBRAMANIAN, J.

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