

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.464 of 2017
& C.M.P.No.2254 of 2017

S.P.Prabakaran

.. Petitioner

Vs.

1.Godha Parthasarathy

2.Andal

3.Vasumathi Ramarajan

4.Kalyani

5.Badri Narayanan

.. Respondents

(Represented by their power of attorney agent
D.Padma, W/o.V.N.Devadoss, Hindu, aged about 49 years
residing at No.23, Chelliammal street, Shenoy nagar
Chennai-600 030.)

Prayer: Civil Revision Petition filed under Section 115 of Civil
Procedure Code, against the fair and decretal order dated 07.11.2016

made in I.A.No.549 of 2016 in O.S.No.9543 of 2009 by the learned XVI Assistant Judge, City Civil Court, Chennai, and consequently, dismiss I.A.No.549 of 2016 in O.S.No.9543 of 2009 by allowing this C.R.P.

For Petitioner : Mr.V.Surya Sankar

For Respondents : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 07.11.2016 made in I.A.No.549 of 2016 in O.S.No.9543 of 2009 by the learned XVI Assistant Judge, City Civil Court, Chennai,

2.The petitioner is the defendant in O.S.No.9543 of 2009 on the file of the XVI Assistant City Civil Court, Chennai. The respondents filed the said suit through power agent for declaration and recovery of possession. The petitioner filed written statement and contested the suit. The suit was dismissed for default on 10.10.2014 for non-prosecution. The respondents filed I.A.No.549 of 2016 to condone the delay of 400

days in filing the petition to restore the suit. According to the power agent of the respondents through whom the suit was filed, she was suffering from viral fever and hence could not contact her advocate for one year. Only after recovery from illness, she contacted her present advocate and on verification, found that the suit was dismissed for default. Immediately, she filed the present application. The default in appearance on hearing date is neither wilful nor wanton, but due to bonafide reasons stated above.

2(a) The petitioner filed counter and opposed the said application stating that the respondents took adjournment on various dates when the suit was listed for trial. The respondents have not given any valid reason for condonation of delay and prayed for dismissal of application.

2(b) The learned Judge, allowed the application in the interest of justice and to avoid multiplicity of proceedings on payment of cost of Rs.1,000/- to be paid to the petitioner on or before 08.12.2016 to give a

chance to the respondents to proceed with the suit.

2(c) Against the said order dated 07.11.2016 made in I.A.No.549 of 2016 in O.S.No.9543 of 2009, the present Civil Revision Petition is filed.

3. The learned counsel appearing for the petitioner submitted that the order of the learned Judge is cryptic and non-speaking order. The learned Judge has not considered the objection raised by the petitioner in the counter affidavit and failed to see that the respondents have not given any valid reason for condonation of delay. The respondents did not appear for more than one year when the suit was posted for trial “as last chance, no further adjournment and also on filing the petition by their counsel” and prayed for setting aside the order of the learned Judge.

4. Though respondents have entered appearance through their counsel, there is no representation when the matter is taken up for hearing.

5. Heard the learned counsel appearing on behalf of the petitioner and perused the entire materials available on record.

6. The Civil Revision Petition is filed against the order of condoning the delay of 400 days in filing the petition to restore the suit on file. It is well settled that an application for condonation of delay must be considered liberally and the parties must be given an opportunity to put forth their case on merits and should not be shut down at the threshold itself. The length of delay is not a criteria but the parties must give valid and acceptable reason for condonation of delay. In the present case, the suit is being conducted by the power agent of the respondents and she has given reason for non-prosecution that due to her illness and her inability to contact her advocate, she could not appear before the Court on the date of hearing. Considering the nature of relief sought for in the suit and the suit was dismissed at the stage of trial, it will be in the interest of justice, an opportunity must be given to the respondents to conduct their case on merits. The learned Judge, in the interest of justice and to give a chance to the respondents has allowed the application, on

payment of cost of Rs.1,000/- payable to the petitioner. There is no error or illegality in the order passed by the learned Judge dated 07.11.2016 made in I.A.No.549 of 2016 in O.S.No.9543 of 2009 warranting interference by this Court.

7.For the above reasons, this Civil Revision Petition is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

07.09.2020

Index : Yes/No

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To

The XVI Assistant Judge
City Civil Court,
Chennai.

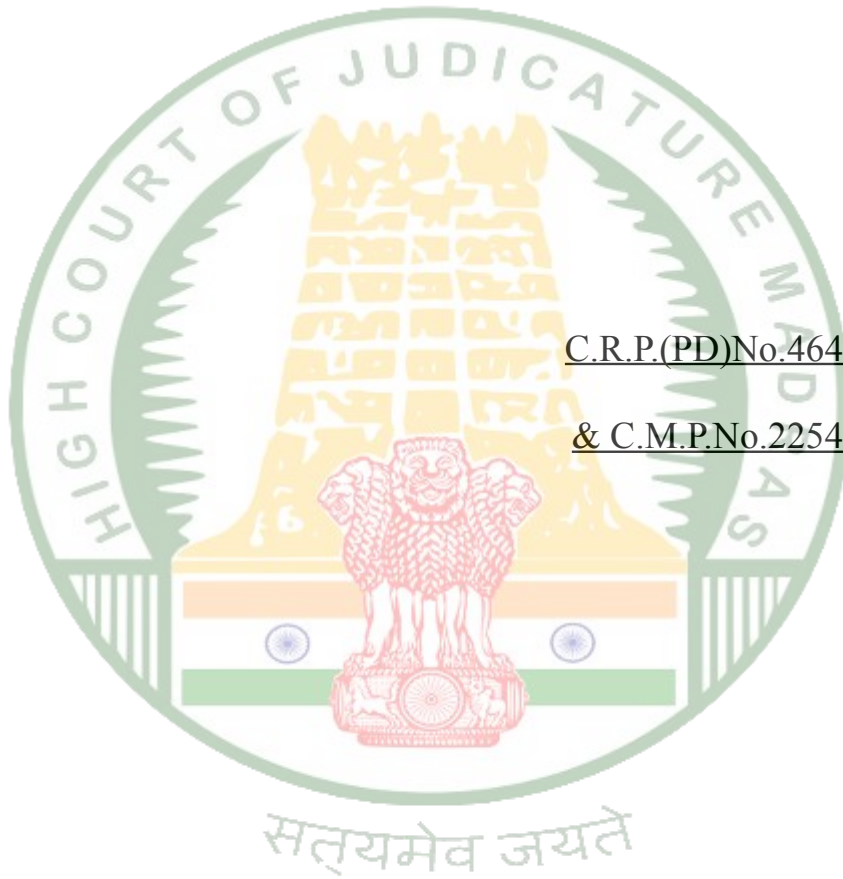
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