

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) No.4054 of 2018

Ravi (Deceased)

1. Lakshmanan

2. Kumar

3. Vasantha

4. Kalaivani

5. Minor Thaiyal Nayaki

Rep. By Guardian & mother Kalaivani

.. Petitioners

Vs.

Susila

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the order and decretal order in I.A.No.1243 of 2017 in O.S.No.78 of 2011 on the file of District Munsif Court, Sirkali dated 25.09.2018 and restore the same.

For Petitioners : Mr.S.Sabarish
for M/s.S.Kingston Jerold

For Respondent : Mr. R. Naga Sundaram

ORDER

This matter is taken up for hearing through Video-Conferencing.

The plaintiffs in OS No.78 of 2011 have come up with this Revision challenging an order dismissing their application for condonation of delay of 109 days in filing the application to restore the suit that was dismissed for default.

2. One Ravi filed a suit seeking permanent injunction. Since he died pending suit, his legal representatives were brought on record as plaintiffs 2 to 6 by an order made on 28.11.2016. Thereafter, steps were taken to amend the plaint complaining that the plaintiffs had encroached upon a portion of the suit property and recovery of possession was sought for. After the amendment, an additional written statement was also filed. The suit that was posted for trial was dismissed for default on 23.03.2017.

3. The plaintiffs came up with the instant application seeking condonation of delay of 109 days in filing an application to restore the suit. The third plaintiff filed the affidavit in support of the said application stating that he was conducting the suit proceedings on behalf of the other plaintiffs also and that he could not appear on the said date i.e., 23.03.2017 as he was affected with Jaundice and was taking native treatment.

4. This application was opposed by the respondent/defendant contending that the illness pleaded by the third plaintiff is not true and there is no explanation for non-appearance of the other plaintiffs. The Trial Court accepted the defence and dismissed the application.

5. I have heard Mr. S.Sabarish learned counsel appearing for M/s.S.Kingston Jerold, for the petitioners and Mr.R.Nagasundaram, learned counsel appearing for the respondent.

6. Mr.S.Sabarish, learned counsel appearing for the petitioners would

contend that the Trial Court was not right in dismissing the application on the ground that the delay has not been properly explained. He would also point out that the specific averment has been made in the affidavit filed in support of the application that it was the third plaintiff, who was taking care of the suit on behalf of the other plaintiffs. Admittedly the plaintiffs are the legal representatives of the original plaintiff Ravi. There is nothing wrong in one of the family members taking care of the suit proceedings and he having fallen sick, steps could not be taken immediately.

7. Contending contra Mr.R.Nagasundaram, learned counsel appearing for the respondent would submit that the Trial Court has considered the reasons and concluded that the reasons are not sufficient to condone the delay. I have considered the submissions of the learned counsel on either side.

8. The delay is not much, it is only 109 days. The Hon'ble Supreme Court and this Court have repeatedly held that Courts should be liberal in condoning the delay when it is shown that the party causing the delay will

not be benefited by the delay. The suit is one for recovery of possession of immovable property. The present plaintiffs are the legal representatives of the original plaintiff, who have been impleaded only in the year 2016 and the suit came to be dismissed on 23.03.2017. The Court cannot adopt a strict approach in such cases of delay. No doubt the reason given for the delay is one of the oldest reasons available to a defaulting party viz., suffering from Jaundice.

9. Considering the length of the delay and the fact that the suit is one for recovery of possession of immovable property, I am of the considered opinion that the Court ought to have condoned the delay and givev the plaintiffs a chance to contest the suit on merits.

10. In view of the above, the Civil Revision Petition is **allowed**. The order of the Trial Court dismissing IA No.1243 of 2017 is set aside, the said application is allowed, the delay of 109 days in filing the application to restore the suit will stand allowed. The Trial Court is directed to number the application under Order 9 Rule 9 of the Code of Civil Procedure and

proceed with the same in accordance with law. No costs.

24.09.2020

jv

Index: No

Internet: Yes

Speaking order

To

1. The District Munsif,
Sirkali.
2. The Section Officer,
V.R.Section, High Court of Madras.



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R.SUBRAMANIAN, J.

jv



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