

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 04.02.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. No.129 of 2021

and

C.M.P.No.1189 of 2021

1.M.Pushpakaran

S/o.Muniappa Chettiar,

2.P.Kumar

S/o.Pushpakaran

...Petitioners/Defendants 1 & 2

Vs

1.K.Govindarajan

S/o.Kolandai Gounder

2.S.Buvaneswari

W/o.Shanker

...Respondents/Petitioner and Defendant 3

PRAYER: Civil Revision Petition filed under Section 227 of Civil Procedure Code to set aside the order and decree dated 10.12.2020 made in I.A.No.626 of 2019 in O.S.No.128 of 2012 on the file of the Principal Sub Court, Dharmapuri District.

For Petitioner : Mr.V.R.Annagandhi

सत्यमेव जयते
O R D E R

The present petition has been filed by the petitioners, who are the respondents 1 and 2 in I.A.No.626 of 2019 in O.S.No.128 of 2012, challenging the order and decree dated 10.12.2020 passed by the Principal Sub Court, Dharmapuri District, in allowing the application filed by the petitioner therein for condoning the delay of 359 days in filing the restoration petition.

2. The plaintiff/respondent herein had filed O.S.No.128 of 2012 contending that the suit property belongs to the plaintiff and sought for an injunction against the respondent/defendant therein not to interfere with his peaceful possession and

enjoyment of the suit property. The suit was resisted by the respondent/defendant therein and the plaintiff filed Ex.P1 to Ex.P6 and a petition was filed by the respondent/defendant therein to cross examine the plaintiff and the said petition was ordered and the plaintiff has to be cross examined on 06.02.2018. However, on the said date, the plaintiff was not present, which resulted in dismissal of the suit. As against the same, an interlocutory application was filed by the plaintiff with a delay of 359 days by submitting that since the plaintiff was suffering from eye deficiencies and was also suffering the age related ailments and he had undergone surgery in the eye, he could not appear on the said date and that he came to know about the dismissal of the suit against him only after he spoke with his counsel on 03.02.2019. Though he ought to have filed the application for restoration on 05.03.2018, since he came to know about the dismissal only on 03.02.20219, a delay of 359 days had occurred for filing the application for restoration and in the above circumstances, prayed for allowing the petition for restoration.

3. The petitioners/defendants contested the claim of the plaintiff stating that the explanation offered by the plaintiff is not true and that during the said time, the petitioner had indulged in very many business activities and that he had registered very many documents during the said time. All the facts of the restoration giving an explanation of eye surgery is false and therefore prayed for dismissal of the application. However, the Court below, accepting the submissions of the plaintiff, allowed the restoration petition on payment of cost of Rs.1,000/- to the respondent/ defendant and further stated that if the amount is not paid, the petition would stand dismissed. Aggrieved by the said order, the present petition is filed.

4. It is the contention of the learned counsel for the petitioner that the eye problem stated to have been suffered by the plaintiff is a suppress claim, which has not been substantiated by any material, and it is only the parties preventing the petitioner/defendants from cross examining the plaintiff. It is the further submission of the learned counsel that each and every days delay has to be explained in a proper manner, which has not been done by the plaintiff and the Court below has not taken all the above circumstances into consideration in a proper perspective and had allowed the petition by merely directing for payment of meager cost, which deserves interference in the case on hand by this Court.

5. Heard the submission of the learned counsel for the petitioner and perused the order passed by the Court below.

6. No doubt true, each and every days delay has to be explained properly by the plaintiff, while filing the petition for restoration. The expression "sufficient cause" used in Section 5 of the Limitation Act, 1963 and other statutes is enough to enable the Courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay, but over the years, this Court has advocated that a liberal approach should be adopted in such matters so that substantive rights of the parties are not defeated merely because of delay.

7. In the case on hand, a perusal of the order passed by the Court below reveals that the plaintiff has taken a stand that he was suffering from age related ailments and also had undergone surgery, which prevented from appearing before the Court. But, no substantiative records have been placed by the plaintiff to prove the said fact. Equally, the petitioner/defendant has taken a stand that the plaintiff was very much moving alone and registered very many documents. No documentary evidence to support the said fact has been placed before the Court. In such situation, this Court is of the considered view that in the interest of justice, it would not be fair and appropriate to set aside the order passed by the Court below. However, the cost imposed by the Court below is very meager and in the absence of proper explanation on the part of the plaintiff for the delay, instead of setting aside the order passed by the Court below, this Court feels that enhancing the cost would meet the ends of justice.

8. Accordingly, this civil revision petition is disposed of, by directing the plaintiff/first respondent herein to pay a cost of Rs.2,000/- instead of Rs.1,000/- as ordered by the Court below to the petitioners herein within a period of two weeks from the date of receipt of copy of this order and file proof of payment before the Court below, failing which the restoration petition ordered by the Court below stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

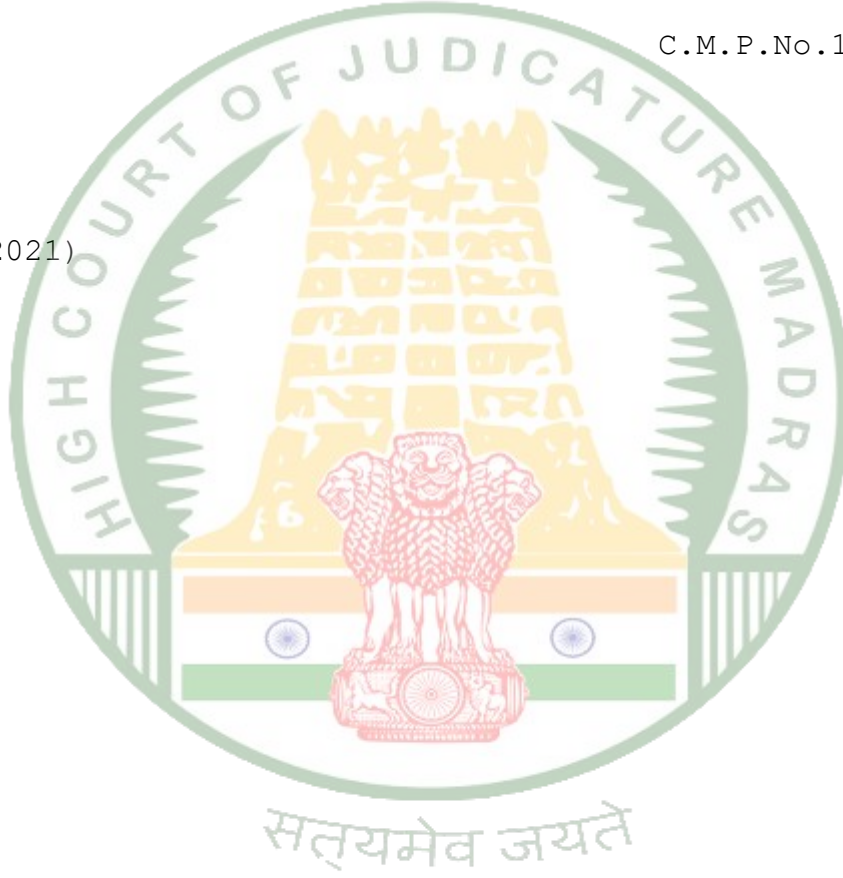
To

The Principal Sub Court,
Dharmapuri District.

+1cc to Mr.V.R.Anna Gandhi, Advocate, S.R.No.6074

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NMI (CO)
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