

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP (NPD) No.1552 of 2018

1.Muralidharan
2.Dhanalakshmi

.... Petitioners

Vs

1.Bhagyavathi
2.Minor Mugilan
rep by his guardian and mother
Mrs.Sakuntala

.... Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the order and decree dated 08.01.2018 made in I.A.No.87 of 2017 in O.S.No.90 of 2013 on the file of the District Munsif-cum-Judicial Magistrate, Vedaranyam.

For Petitioners : Mr.K.M.Subrahmaniam

For R1 : Mr.S.Kumaradevan

ORDER

This Civil Revision Petition is directed against the fair and decreetal order dated 08.01.2018 made in I.A.No.87 of 2017 in O.S.No.90 of 2013 on the file of the District Munsif-cum-Judicial Magistrate, Vedaranyam, thereby dismissing the petition to condone the delay in filing to restore the suit.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed a suit for declaration in respect of the suit property and also for permanent injunction. Pending suit, the counsel for the petitioners before the Trial Court fell ill and as such he could not attend the Court. At the same time, the second petitioner was also suffered with Jaundice and she had taken siddha treatment. Therefore, she was not able to appear before the Trial Court and the suit was dismissed for default on 09.11.2016. So far as the first petitioner is concerned, he had gone for his studies and as such he also could not attend the Trial Court. The second petitioner is being an illiterate lady and she is a daily labour, she was not able to filing a petition to restore the suit immediately. Therefore, there was a delay of 92 days in filing the petition to condone the delay. The Court below dismissed the said petition only on the ground that the petitioners failed to examine any witnesses in support of their case and also did not mark any documents to show that the second petitioner was suffered with Jaundice. The second petitioner was suffered with Jaundice and she had taken siddha treatment and as such she did not produce any medical records before the Trial Court. Further as stated supra, as she was suffering from Jaundice, she could not also appear before the Trial Court.

3. Considering the above facts and circumstances, the petitioners may be given one more opportunity to pursue their suit, since the suit is filed for declaration and permanent injunction in respect of the suit property.

4. In view of the above, the order passed by the Trial Court dated 08.01.2018 made in I.A.No.87 of 2017 in O.S.No.90 of 2013 on the file of the District Munsif-cum-Judicial Magistrate, Vedaranyam is set aside. The Civil Revision Petition stands allowed on cost. The petitioner shall pay a sum of Rs.2,500/- to the respondents within a period of two weeks from the date of receipt of a copy of this order, failing which the order shall stand automatically cancelled. On such deposit, the Trial Court is directed to restore the Suit and dispose of the same on merits and in accordance with law, within a period of three months. No costs.

WEB COPY

16.04.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

lpp

G.K.ILANTHIRAIYAN, J.

lpp

To
The District Munsif-cum-Judicial Magistrate,
Vedaranyam.



CRP (NPD) No.1552 of 2018

WEB COPY

16.04.2021