

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2021

CORAM

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

C.R.P.(NPD) No.1180 of 2016

1.S.Meenakshi
2.S.Balathandayutham ... Petitioners
Vs.
K.Chokkalingam ... Respondent

Prayer :- Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure to set aside the Fair and Decreetal Order dated 17.08.2015 passed in I.A.No.326 of 2014 in O.S.No.123 of 2006 on the file of the Principal District Munsif, Chidambaram.

For Petitioners : Mr.R.Gururaj
For Respondent : Mr.A.Muthukumar

ORDER

The Civil Revision Petition arises out of the fair and decreetal order dated 17.08.2015 made in I.A.No.326 of 2014 in O.S.No.123 of 2006 on the file of the Principal District Munsif, Chidambaram, thereby allowing the petition to condone the delay of 1300 days in filing an application to restore the suit.

2. The petitioners are the defendants and the respondent is the plaintiff. The respondent filed a suit for bar injunction in respect of the suit schedule property. Thereafter, the respondent failed to appear before the Court below and as such the suit itself was dismissed for default on 02.09.2009. After a period of 1300 days, the respondent filed a petition to restore the suit with an application to condone the delay. The Court below allowed the same. Aggrieved by the same, the petitioners preferred this Civil Revision Petition before this Court.

3. The learned counsel for the petitioners would submit that the suit was dismissed for default on 02.09.2009 ; On 24.09.2010, the respondent and his family members executed a Mortgage Deed in favour of the Co-operative Society ; and thereafter, on 13.05.2014, they also executed another rectification deed in respect of the mortgage deed already executed by them on 24.09.2010. The documents marked in support of the respondent's contention in the condone delay petition are all subsequent to the petition to restore the suit. He further submitted that the reasons stated

in the affidavit filed in support of the condone delay petition are not sufficient cause for the delay. The respondent has stated that he was suffering from Jaundice and fever and as such he was not able to appear on 02.09.2009 before the Trial Court and thereafter he was bedridden and taken country traditional treatment for Jaundice and other illness. The learned counsel also relied upon the Judgment in the case of ***Office of the Chief Post Master General & others Vs. Living Media India Ltd. & another*** reported in ***2012 (4) LW 100***.

4. Per contra, the learned counsel for the respondent/plaintiff would submit that the respondent/plaintiff filed a suit for bar injunction and it has to be decided on merits, instead it was dismissed for default. Further, he would submit that the respondent failed to appear before the Trial Court on 02.09.2009 as he suffering from various illness. In support of his submission, medical records were also marked as Exs.A1 to A12, which were duly considered by the Trial Court and the restoration was allowed with cost of Rs.1,500/- and the same was also complied with.

5. Heard Mr.R.Gururaj, learned counsel appearing for the petitioners and Mr.A.Muthukumar, learned counsel appearing for the respondent.

6. The petitioners submitted that the suit filed by the respondent was for a bar injunction. The suit was filed on 23.04.2006. Thereafter, the petitioners filed their written statement on 13.07.2006 and the matter was posted for Trial and the respondent was absent and hence the suit was dismissed for default on 02.09.2009. After 3 ½ years i.e., 1300 days the respondent filed a petition to restore the suit with the condone delay petition.

7. On perusal of the affidavit filed in support of the condone delay petition, the respondent stated that he fell ill on 01.09.2009 and thereafter he found that he was suffering from Jaundice and fever. Thereafter, he had taken treatment and could not able to conduct the trial before the Trial Court. As rightly pointed out by the learned counsel for the petitioners on 24.09.2010 the petitioners and his relatives executed the

Mortgage Deed in favour of the Co-operative Society for the loan borrowed by them. Thereafter, they also executed the rectification deed dated 13.05.2014 in pursuant to the mortgage deed. Though, the respondent filed a petition to condone the delay in filing a petition to restore the suit on 24.03.2012, it was numbered only in the year 2014 and therefore, the respondent did not show Sufficient Cause to condone the delay of 1300 days in filing the petition to restore the suit.

8. The learned counsel for the petitioners relied upon the Judgment reported in **2012 (4) LW 100** in the case of ***Office of the Chief Post Master General & others Vs. Living Media India Ltd. & another.*** Though, it has stated that the suit cost was decided against the postal department and as such the delay was not condoned. The relevant portion of the Judgment is extracted hereunder:

“11. We have already extracted the reasons as mentioned in the “better affidavit” sworn by Mr. Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date

of the judgment of the Division Bench of the High Court in LPA Nos.418 and 1006 of 2007 as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only in 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied only on 08.01.2010, i.e. After a period of nearly four months. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.”

9. As rightly pointed out by the learned counsel for the petitioners, the respondent executed the Mortgage Deed on 24.09.2010 and as such the reasons stated in the affidavit are false and are not sufficient to condone the delay of 1300 days. In view of the above discussions, this Civil Revision Petition is liable to be set aside, accordingly, this Civil Revision Petition is allowed. No costs.

05.03.2021

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To

The Principal District Munsif,
Chidambaram.

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C.R.P.(N.P.D).No.1180 of 2016

G.K.ILANTHIRAIYAN.J,

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