

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.3523 of 2016

Varadarajan ... Petitioner/Plaintiff/Revision Petitioner

Vs.

Panneerselvan ... Respondent/Defendant/Respondent

PRAYER: The Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the order and decretal order dated 16.10.2015 in I.A.No.191 of 2015 in O.S.No.191 of 2009 on the file of the First Additional District Munsif, Vriddhachalam.

For Petitioner : M/S.AL.Ganthimathi

For Respondent : M/S.Abirami for M/S.V.Raghavachari.

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed against the decretal order dated 16.10.2015 in I.A.No.191 of 2015 in O.S.No.191 of 2009 on the file of the First Additional District Munsif, Vriddhachalam.

2. The petitioner is the plaintiff. He has filed a suit for declaration and permanent injunction. But the case was posted under the special list on 12.06.2014 but the plaintiff did not make his appearance and hence the suit was dismissed for default. However he did not file a petition to restore the suit within the prescribed time. He filed a petition to condone the delay of 308 days in filing the petition to restore the suit. The learned Trial Judge has observed that the petitioner did not state any cogent or convincing reasons to condone the inordinate delay of 308 days caused in filing the petition. Without showing a liberal approach, the trial court dismissed the petition. Aggrieved over that, the petitioner/plaintiff has filed this Civil Revision Petition.

3. During the course of their arguments, the learned counsel for the petitioner submitted that the petitioner is a senior citizen and because of his health condition and other inconveniences, he could not make his appearance on the designated day and the delay in filing the petition to restore the suit was not willful.

4. Learned counsel for the respondent would submit that, the petitioner who files a petition for condoning the delay, has got a duty to explain the each and every day delay and convince the Court in order to get that condoned.

5. From the affidavit filed by the petitioner for the petition for condonation of delay, it is seen that he has stated the reasons of his illness for not making his appearance before the Court on 12.06.2014. The contents of the affidavit are glaringly bald and it does not substantiate the reasons stated therein. However the age of the petitioner is to be taken into consideration. After all the affidavit is prepared for the petitioner by his counsel by getting instruction from him. If the learned counsel for the petitioner did not make proper enquiries and collect details, those details will get omitted from the contents of the affidavit. Such failure on the part of the counsel should not affect the interest of the party. However much lenience can not be shown to the petitioner for having been so careless for months together. The delay caused by the petitioner, no doubt has caused hardship and inconvenience for the respondent.

6. Without standing much on the technicalities, in the interest of justice, I prefer to allow the petition in order to pave a way for the suit to get disposed on merits. Hence I feel an opportunity has to be given to the petitioner for getting into the trial, on payment of costs.

Accordingly, this Civil Revision Petition is **allowed** and the order of the lower court dated 16.10.2015 in I.A.No.191 of 2015 in O.S.No.191 of 2009 is set aside on the condition that the petitioner should pay a costs of Rs.5,000/-(Rupees

R.N.MANJULA,J.

jrs

Five Thousand Only) within a period of two weeks from the date of receipt of the copy of this order. And the cost is ordered be deposited in the Trial Court Account and the same is payable to the respondent on application. If the cost is not paid within the stipulated time the petition will stand dismissed.

30.04.2021

Speaking/Non-speaking

Index : Yes/No

Internet : Yes/No

jrs

To

1.The First Additional District Munsif,
Vriddhachalam.

2.The Section Officer,
V.R.Section,
High Court, Madras.

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