

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(N.P.D).No.253 of 2018

Lakshmi Vilas Bank
Rep by its Branch Manager,
Namakkal Town & District.

... Petitioner

Vs

Ramasamy (Deceased)

1. V.R.Venkatachalam (Died)
2. R.Rani
3. R.Bharani
4. C.Gokul
(RR 2 to 4 brought on record as LRs
of the deceased 1st respondent viz.,
V.R.Venkatachalam vide Court Order
dated 02.07.2021 made in CMP Nos.
11673, 11677 & 11678 of 2020 in
CRP No.253 of 2018)

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 31.10.2017 made in I.A.No.657 of 2015 in O.S.No.248 of 2011 on the file of the Subordinate Court, Namakkal.

For Petitioner : Mr.A.Arunbabu
For Respondents : Mr.Dhanyakumar

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 31.10.2017 made in I.A.No.657 of 2015 in O.S.No.248 of 2011 on the file of the Subordinate Court, Namakkal, thereby dismissing the petition to condone the delay in filing the petition to restore the suit.

2. The petitioner is the plaintiff and the deceased first respondent was the defendant. The petitioner filed a suit in O.S.No.248 of 2011 for recovery of money. Originally, the suit was filed in O.S.No.219 of 2014 before the Principal District Judge, Namakkal and thereafter, it was transferred to the file of Subordinate Court, Namakkal and re-numbered as O.S.No.248 of 2011. When the suit was posted for trial, neither the advocate nor the plaintiff appeared before the Court below and as such, the suit was dismissed for default on 10.01.2012. Thereafter, the petitioner filed a petition to restore the suit with a delay of 1167 days in filing the petition to restore the suit.

3. On perusal of the affidavit filed in support of the condone delay petition revealed that the counsel, who was engaged by the

petitioner fell ill on the date of hearing of the suit and as such, no one was represented on the date of hearing. Therefore, the Court below dismissed the suit for default. Thereafter, the plaintiff/petitioner thought that the bundle was handed over to the other counsel, therefore, there was a delay of 1167 days in filing the petition to restore the suit.

4. Admittedly, the petitioner did not examine any witnesses in support of his contention and failed to mark any documents. The petitioner also did not even mention the name of the advocate, who was engaged by the petitioner before the Court below and on which date he fell ill and no particulars was filed by the petitioner to condone the delay of 1167 days. The petitioner should have stated sufficient cause to condone the said delay.

5. However, the learned counsel for the petitioner would submit that the deceased first defendant availed loan from the petitioner and deposited the title deeds and the same was mortgaged with the petitioner's bank.

6. In view of the above, this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, the Civil Revision Petition is dismissed. However, when the respondents are taking steps to get back their original parent document, the petitioner is directed to explore the possibility of amicable settlement with the respondents by reasonable amount. The learned counsel for the respondents also submitted that they are ready and willing to settle the amount to the tune of Rs.4,00,000/-. The petitioner may consider the said request made by the respondents and return back the documents deposited by the deceased first defendant. No costs.

23.07.2021

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

सत्यमेव जयते

To

The Subordinate Judge,
Namakkal.

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G.K.ILANTHIRAIYAN,J.

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