

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.01.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.2303 of 2020

P.Balasubramaniam

... Appellant/Plaintiff

Vs.

1. J.Murugapan
N.Jayaraman(died)
2. Rukmani
3. Nagammal
4. Alamelu

... Respondents/Defendants
1,3,4

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Fair and Final order dated 06.11.2020 passed in I.A.No.316 of 2018 in O.S.No.50 of 2004 on the file of the learned II Additional Subordinate Judge, Salem.

For Petitioner: Mr.R.Nalliyappan

O R D E R

The Revision Petitioner, who is the plaintiff has filed the suit in O.S.No.50 of 2004 before the learned Subordinate Judge, Salem against the respondents / defendants to pass a decree in his favour directing the respondents / defendants to pay to the plaintiff a sum of Rs.1,09,950/- with interest at the agreed rate of 24% from the date of suit till the date of realization jointly or severally on the basis of the promissory note and also award the costs of the suit. In consequence, written statement was filed by the respondents / defendants on 27.01.2006. The suit was posted for trial and the same was dismissed for default on 07.04.2011. Thereafter, the petitioner has filed a petition in I.A.No.316 of 2018 before the learned II Additional Subordinate Judge, Salem under Section 5 of the Limitation Act and Section 151 of C.P.C., to restore the suit.

2. In the said I.A.No.316 of 2018, before the court below, the petitioner has stated that the suit in O.S.No.50 of 2004 was

posted on 07.04.2011, but the petitioner was met with an accident and his legs are damaged and has forced to take treatments continuously at various hospitals for the past two years. Due to the said accident, the petitioner could not contact his counsel to know about the proceedings of the suit. Later on, the petitioner came to the counsel's office and found that the suit was dismissed for default on 07.04.2011, hence he has filed the said petition to restore the suit, as he was actually prevented from appearing this Court along with this petition under Section 5 of the Limitation Act. Therefore, there is a delay in filing the said petition, however the same is neither wilful nor wanton.

3. By way of the counter to the said I.A.No. 316 of 2018, before the court below, the respondents / defendants contended that the petitioner had not filed any suit as against one N.Narayanan, but he had filed this application that the 2nd respondent is N.Narayanan. Further, the petitioner has filed a suit as against one Jayaraman, who is the father of the respondents 1, 3 and 4 and wife of 2nd respondent for relief of recovery of money. The petitioner has impleaded the legal heirs of the said Jayaraman, who are the respondents 1,2,3 and 4 and the cause title did not show the name of Jayaraman. The said suit was posted in the list for several times for trial and the petitioner did not appear before court and the suit was dismissed for default on 07.04.2011. Instead of filing a petition within 30 days from the date of default, i.e., on 06.05.2011, the petitioner / plaintiff has filed a application only on 13.04.2018, thus, from 06.06.2011 to 13.04.2018, the total days of delay is 2532 days, but the petitioner had mentioned only 860 days to condone the delay and that there is no valid reasons stated by the petitioner.

4. Further, in the said counter, the respondents / defendants before court below had averred that the petitioner had sufficient knowledge about the dismissal of the order dated 07.04.2011 but now suppressing all these facts and only to drag on the proceedings, the petitioner has come forward with the said application. Also, no document has been filed to prove his pleadings, hence prayed for dismissal of the same. The court below considering the pleadings and the documents placed on record has dismissed the I.A.No.316 of 2018, as against the same, the present Revision is filed by the petitioner.

5. Heard Mr.R.Nalliyappan, learned counsel for the petitioner and perused the documents placed on record.

6. On the perusal of the order passed by the court below in I.A.No.316 of 2018 in O.S.No.50 of 2004, it is seen that on 06.10.2009, when the suit was posted for trial, the petitioner

has remained absent and the suit was dismissed for default. Subsequently, the petitioner has filed a petition in I.A.No.6 of 2010 to condone the delay of 56 days in filing the petition to restore the suit, which was dismissed for default on 06.10.2009. The said I.A.No.6 of 2010 was dismissed for default on 18.01.2010. That apart, another application was filed by the petitioner to condone the delay of 252 days under Section 5 of Limitation Act, which was numbered as I.A.No.438/2010 to restore the I.A.No.6 of 2010 and the said I.A. was allowed in I.A.No.528 of 2010 and I.A.No.6 of 2010 was restored and allowed on payment of cost.

7. Thereafter, I.A.No.71 of 2011 was taken on file and was allowed on cost and the suit was restored to file on 21.03.2011. Further, the court below pointed out that in the I.A.No.438 of 2010 the petitioner has enclosed the medical certificate for undergoing treatment from 01.10.2009 to 01.01.2010, again the petitioner has stated the same reasons, which was stated earlier. However, the court below has found that there is no valid documents and the petition filed in the year 2013 is not supported by proper documents. It is also observed by the court below that from 07.04.2011 till 14.09.2013, there was no valid explanation or sufficient cause shown by the petitioner for the delay occurred. Considering all the records and the reasons stated by the petitioner in the proceedings, the Court below observed that the petitioner has not shown sufficient cause for the delay and hence dismissed the application, against which the present Civil Revision Petition has been filed stating that the Court below ought to have condoned the delay of 860 days in filing the application under Order 9 Rule 9 of CPC to restore the suit and dismissing the petition by holding that the petitioner herein has not explained the reason for the delay with evidence, is not sustainable.

8. During the course of arguments, the learned counsel for the petitioner urged before this Court that the court below ought to have taken into consideration of the fact that since the petitioner had met with an accident, he was not in position to contact the concerned counsel. Moreover, till date, he is under the care of one Mr.Rajasekaran, under such circumstances, the court below ought to have allowed the application in I.A.No.316 of 2018. He further pleaded that the said application can be allowed on payment of some cost.

9. On perusal of the order passed by the court below, it is clear that the petitioner has not stated any valid reasons for not appearing before the court below when the matter was posted for trial. It is also taken into account that when the petitioner is alleged to have taken treatment for two years due to the accident, he has not produced any valid documents to

prove that he was not in a position to travel and meet his Advocate and proceed further. Further, there are various Interlocutory Applications filed by the petitioner for condonation of delay in restoring the suit and restoring the suit, viz., I.A.Nos.438 of 2010; 71 of 2011 and 316 of 2018.

10. Further, as observed by the court below, each and every day delay has not been explained by the petitioner. That part, when no material has been placed even before this Court to prove his contention or shown sufficient cause for the delay, this Court is of the view that the petitioner is not diligent to defend the suit nor acted prudently to restore the suit, which was filed in the year 2004 and that there is no merit in filing the present petition. Further, after this long period of sixteen years also, the petitioner has not explained this Court the proper reason for not filing the restoration petition for restoring the suit.

11. Besides the above, when the court below has given a reasoned order, this Court finds no illegality in the order passed and this Court is not inclined to interfere with the order passed by the court below in I.A.No.316 of 2018 in O.S.No.50 of 2004 dated 06.11.2020. This Court also rejects the claim of the petitioner's counsel that the application can be allowed on costs.

In view of the above, the present Civil Revision Petition fails and the same is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssd
To

The II Additional Subordinate Judge,
Salem

C.R.P.No.2303 of 2020

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