



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.12.2021**

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(NPD) (MD) No.1834 of 2014

Pappa .. Petitioner/Petitioner/Plaintiff

-vs-

1.S.Arumugam
2.Manimuthu .. Respondents/Respondents/Defendants

Prayer :- Petition filed under Section 115 of Civil Procedure Code to set aside the fair and decretal order passed in I.A.No.757/2013 in O.S.No.132 of 2010 dated 18.06.2014 on the file of the I Additional District Munsif, Tirunelveli.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.M.S.Jawaharlal

ORDER

The plaintiff is the revision petitioner before this Court challenging the order dismissing her application for condoning the delay of 216 days in filing the petition to restore the suit dismissed for default.

2.The brief facts, necessary for appreciating the issue on hand, are as follows:-

2.1.The revision petitioner herein had filed the suit for a bare injunction restraining the respondents/defendants from interfering with her peaceful possession and enjoyment of the suit schedule property in O.S.No.132 of 2010 on the file of the District Munsif, Tirunelveli. The 1st defendant had filed his written statement and it appears that when the matter was listed for the evidence of P.W.2 on 09.10.2012, since P.W.2 had not appeared before the Court, the suit was dismissed for default.

2.2.In the affidavit filed in support of the application, the plaintiff had stated that it was only when she had met his counsel on 10.06.2013, she had come to know about the dismissal of the suit on account of the non-examination of P.W.2. Therefore, there is a delay of 216 days in filing the application to condone the delay in filing the restoration petition.



3.The respondents/defendants had filed a counter *inter alia* contending that the suit was posted on 28.09.2012 for the evidence of P.W.2. Since P.W.2 had not appeared, the matter was adjourned to 04.10.2012. On the said date also, P.W.2 had not appeared and therefore, the matter was listed finally on 09.10.2012 for the evidence of P.W.2 and since P.W.2 did not appear on the said date, the suit was dismissed for default. They would, therefore, state that the application is nothing but an attempt to protract the proceedings and therefore, the learned I Additional District Munsif, Tirunelveli, has rightly dismissed the application.

4.Heard the learned counsel on either side and perused the records.

5.It is rather perplexing that the learned I Additional District Munsif, Tirunelveli, has proceeded to dismiss the suit for the non-appearance of a witness. If a witness has not appeared, the learned Judge ought to have closed the evidence and proceeded with the case. However, for reasons best known to the learned Judge, she has proceeded to dismiss the very suit itself. The order dated 18.06.2014 is *per se* erroneous and therefore, this Court not only sets aside the order dated 18.06.2014, passed in I.A.No.757 of 2013, refusing to condone the delay of 216 days, but also sets aside the dismissal order and restores the suit to the file. Since the suit is already at the stage of trial, the learned I Additional District Munsif, Tirunelveli, is directed to dispose of the suit within a period of two months from the date of receipt of a copy of this order.

6.The Civil Revision Petition is allowed on the above direction. No costs.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

abr

Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.



To

The I Additional District Munsif,
Tirunelveli.

WEB COPY

+1 CC to M/s.M.S.JAWAHARLAL, Advocate
(SR-37273[F] dated 03/12/2021)

+1 CC to M/s.H.ARUMUGAM, Advocate
(SR-37286[F] dated 03/12/2021)

C.R.P. (NPD) (MD) No.1834 of 2014

Dated: 02.12.2021

MGJ(17.12.2021) 3P 4C