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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	23.12.2020
DELIVERED ON	19.01.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD)No. 1312 of 2015 (NPD)
and M.P. (MD) No. 1 of 2015

Mariyam

... Petitioner/Petitioner/Defendant

vs.

Fathima Beevi

... Respondent/Respondent/Plaintiff

PRAYER: Petition filed under Section 115 of the Civil Procedure Code, to set aside the decreetal order of the learned District Munsif, Paramakudi, dated 01.04.2015 made in I.A. No.135 of 2015 in O.S. No. 100 of 2013 on the file of the learned District Munsif, Paramakudi.

For Petitioner : Mr.N. Sekar
For Respondent : No Appearance

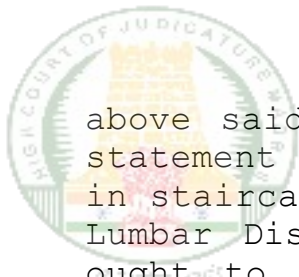
O R D E R

The Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 01.04.2015 in I.A. No.135 of 2015 in O.S. No. 100 of 2013 passed by the learned District Munsif, Paramakudi.

2. The respondent herein/plaintiff has filed a suit in O.S. No.100 of 2013 on the file of the District Munsif Court, Paramakudi, for declaration, recovery of possession and Mandatory injunction. In the said suit, an exparte decree was passed on 30.08.2012. Therefore, the revision petitioner herein has filed a petition in I.A. No. 135 of 2015 in O.S. No. 100 of 2013 to condone the delay of 274 days in filing the petition to set aside the exparte decree, dated 30.08.2012 in O.S. No. 100 of 2013 and the same was dismissed on 01.04.2015 by the learned District Munsif, Paramakudi. Hence, the revision petitioner is before this Court.

3. The learned counsel appearing for the revision petitioner submitted that the Court below ought to have considered that the

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above said suit was posted on 22.01.2014 for filing the written statement and on the said date, the revision petitioner fell down in staircase and for the same she was admitted in the Hospital for Lumbar Disc Syndrome. He further submitted that the Court below ought to have considered that after issuance of the notice in Execution Petition she has filed a petition to set aside the exparte decree with written statement without any delay. He further submitted that the Court below ought to have considered that the revision petitioner has valid ground to defend the case and she already filed her written statement to show her bonafide. He further submitted that the order passed by the Court below is liable to be set aside. Hence, he prayed to allow the Civil Revision Petition.

4. The records were examined and heard the oral submission of the learned counsel appearing for the revision petitioner.

5. The revision petitioner herein/D-2 had filed I.A. No. 135 of 2015 under Section 5 of Limitation Act to condone the delay of 274 days in filing exparte decree set aside petition. Exparte decree was passed on 22.01.2014.

6. The revision petitioner/D-2 had stated that her husband went to foreign and she also fall down from staircase and had treatment. Therefore, she could not attend the Court to file written statement and her absence is neither willful nor wanton. Hence, the delay may be condoned.

7. The respondent had stated in his counter that lot of adjournments given to the petitioner for filing written statement. Reason is also false. Hence, the petition may be dismissed.

8. Delay is for 274 days. An exparte decree was passed on 22.01.2014. When she fell down from staircase and where she was taking treatment also not disclosed in her affidavit. But, suit was filed for declaration and recovery of possession and also mandatory injunction. An Execution Petition was filed, but, stayed by this Court. Therefore, the decree not executed. Eventhough, the reason is unacceptable, the delay is only 274 days. Hence, one opportunity to be given to the petitioner. Delay may be condoned by Costs.

9. The Civil Revision Petition is allowed on payment of Costs and the revision petitioner is directed to pay a sum of Rs.2,000/- [Rupees Two Thousand Only] on or before **29.01.2021** to the Legal Services Authority attached to this Bench. If, the revision petitioner failed to comply with the condition, the Civil Revision Petition automatically stands dismissed.



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10. Post the matter 01.02.2021, for reporting compliance.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To

1) The District Munsif,
Paramakudi.

2) The Section Officer-2 Copies
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Officer Incharge,
Legal Services Authority,
Madurai Bench of Madras High Court,
Madurai.

Order made in
C.R.P. (MD)No.1312 of 2015 (NPD)
19.01.2021

KM (27.01.2021) 3P 5C