



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 03.09.2021

Delivered On : 22.10.2021

CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) .No.2893 of 2018

WEB COPY

A.Velusamy ... Petitioner/Petitioner/ Plaintiff
Vs.

N.Mohan ... Respondent/Respondent/Defendant

PRAYER: This Civil Revision Petition has been filed under Section 115 of Code of Civil Procedure Code, to call for the records in I.A.No.869 of 2017 in O.S.No.1150 of 2007 dated 23.07.2018, on the file of the II Additional District Munsif, Tiruchirappalli and to set aside the same.

For Petitioner : Mr.A.Haja Mohideen
For Respondents : Mr.P.Thiyagarajan

ORDER

This petition has been filed to set aside the order in I.A.No.869 of 2017, in O.S.No.1150 of 2007 dated 23.07.2018, on the file of the learned II Additional District Munsif, Tiruchirappalli.

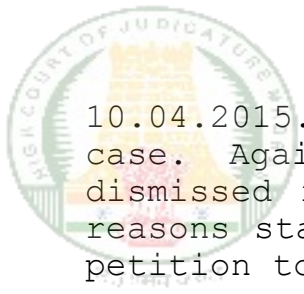
2.The petitioner herein is the plaintiff and the respondent herein is the defendant in the suit. The petitioner herein has filed a suit in O.S.No.1150 of 2007, for a prayer of bare injunction. The case was dismissed for default on 10.08.2016. The petitioner filed a restoration petition with a delay excuse petition in I.A.No.869 of 2017 to condone the delay of 649 days.

3.Brief substance of the petition in I.A.No.869 of 2017 reads as follows:

The suit was posted on 10.08.2015 for commencing the trial. The petitioner was not able to attend the Court, due to his sudden illness and old age. Subsequently, the petitioner's counsel sent an application for restoration of suit. The affidavit and paper sent by the petitioner's counsel was misplaced in transit. The delay of 649 days is neither willful non wanton.

4.A brief substance of the counter in I.A.No.869 of 2017 reads as follows:

The suit is filed only for bare injunction in the year 2007. The defendant entered appearance and filed his written statement on 17.04.2008. The petitioner has no interest in the case over a long period of eight years. Finally the case was posted in the list on



10.04.2015. Neither the plaintiff nor the counsel was present in the case. Again the case was posted on 10.08.2015. The suit was dismissed for default. Each day delay has to be explained and the reasons stated in the petition are not valid reasons and prayed the petition to be dismissed.

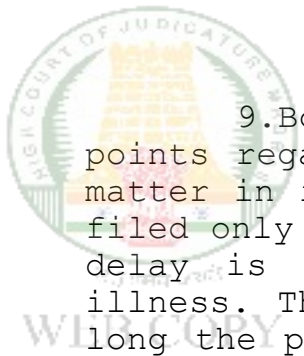
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5. After hearing both sides, the trial Court dismissed the petition. Against which, the revision petitioner has preferred this revision.

6. On the side of the petitioner, it is stated that only due to sudden illness and due to age factor, the petitioner was not able to attend the Court on the date fixed for trial. If the suit is not restored, the petitioner will be deprived of justice. The property is inherited by the petitioner and the survey record of Trichy Corporation stand in the name of the petitioner. Survey field register stand in the name of the petitioner. The trial Court failed to consider the encumbrance certificate. There is no malafide intention on the side of the petitioner to drag on the proceedings. There will be no prejudice to the defendant. The property is only a vacant site. A lenient view has to be taken in allowing the delay excuse petition. In support of this contention, a judgment passed by this Court in the case of **Nirmala Devi v. T.R.Rangasamy** reported in **2017 3 CTC 445** is cited.

7. On the side of the respondent, it is stated that the reason stated in the affidavit is only sudden illness and old age. There is no document to prove the sudden illness and the description of the illness, period of treatment, mode of treatment are not elicited in the affidavit. Another reason stated in the petition is that the affidavit and petition sent by the counsel was missing during the transit. But in the affidavit, only 36 days was mentioned as days of delay that means the affidavit was not misplaced during transit. The affidavit was prepared earlier but wantedly it was filed later. When did the petitioner meet his advocate was not stated in the affidavit. The petition is devoid of merits.

8. On the side of the respondent, it is stated that the suit itself is a vicious litigation. The suit was filed only for bare injunction with regard to 61 cents of land. The allegation is that the defendant is using the suit property for storing construction materials. In fact, the property of the defendant was sold only by the plaintiff. The plaintiff executed a general power deed on 09.10.2001. On the basis of a power deed, 52 cents of the property was sold to one Thangabackiyam. From Thangabackiyam, the plaintiff purchased the property. Only after 4 years, the petitioner has filed the suit. The defendant constructed a Siva temple in the property. Only at the time of installation of a Nanthi statue, the petitioner has filed this suit. There was no encroachment.



9.Both the petitioner and the respondent have raised so many points regarding the main suit, which are irrelevant to decide the matter in issue placed before this court. The revision petition was filed only against the I.A. Petition for condoning the delay and the delay is 649 days. The reason stated for the delay is sudden illness. The petitioner has not narrated what was the illness, how long the petitioner was ill and what was the mode of treatment he has taken. No medical records are filed. The next reason stated in the petition is that the affidavit and petition prepared by the counsel was misplaced during transit. When the affidavit and petition were sent to the petitioner, when they were misplaced, why the petitioner has not chosen to meet the counsel until then were not stated in the petition. The delay is almost two years. Each day delay has to be explained. The petitioner has not explained the delay. The reasons are not satisfactory.

10.There is nothing sufficient enough to interfere in the order passed in in I.A.No.869 of 2017 in O.S.No.1150 of 2007 dated 23.07.2018, on the file of the learned II Additional District Munsif, Tiruchirappalli. Hence, this Civil Revision Petition is dismissed and the order passed in in I.A.No.869 of 2017 in O.S.No.1150 of 2007 dated 23.07.2018, on the file of the learned II Additional District Munsif, Tiruchirappalli is confirmed. No Costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

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

1.The II Additional District Munsif,
Tiruchirappalli.

+1 CC to M/s.P. THIYAGARAJAN, Advocate (SR-32497[F] dated 25/10/2021)

C.R.P. (NPD) (MD) .No.2893 of 2018

22.10.2021

RD/UV(29.10.2021) 3P 3C