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CRP.(PD).No. 1960 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No. 1960 of 2019

and

CMP.No.12793 of 2019

Sankarnarayanan

.. Petitioner

Versus

Hemapriya

...Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 11.04.2019 made in I.A.No.2007 of 2018 in O.S.No.207 of 2017 on the file of Principal District Munsif Court, Bhavani.

For Petitioner : Mr.M. Nandhakumar

For Respondent : Mr.V. Anandhamurthy
For Mr.R.Prabakar



CRP.(PD).No. 1960 of 2019

WEB COPY

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 11.04.2019 made in I.A.No.2007 of 2018 in O.S.No.207 of 2017 on the file of Principal District Munsif Court, Bhavani.

2. The respondent/plaintiff filed the suit in O.S.No.207 of 2017 before the Principal District Munsif Court, Bhavani, for partition against the defendant, the younger brother of the plaintiff. Pending suit proceedings, the petitioner/defendant filed I.A.No.2007 of 2018 under Section 5 of the Limitation Act, seeking to condone the delay of 405 days in filing the petition to set aside the ex-parte decree. After perusing the records, the trial Court dismissed the application by order dated 11.04.2019 on the ground that there is no proper reason and no proof of medical records has been produced for his illness. Challenging the impugned order, the present revision is filed before this Court.



CRP.(PD).No. 1960 of 2019

WEB COPY

3. The learned counsel appearing for the revision petitioner submitted that the trial Court has failed to take note of the fact that the suit for partition is between the brother and sister. Due to stomach pain and swelling of liver frequently, the revision petitioner was bed ridden, therefore, he could not attend the Court proceedings. Therefore, the trial Court has failed to appreciate the fact that and erroneously had passed the ex-parte order in the suit proceedings. Hence, he prays to set aside the impugned order.

4. The learned counsel appearing for the respondent/plaintiff submitted that the petitioner/defendant has not produced any medical records to show that he was really suffering from illness, nor proper reasons have been assigned before the trial Court. Therefore, he prays for dismissal of the revision petition.

5. On a perusal of the records, it is seen that the respondent/plaintiff filed the suit in O.S.No.207 of 2017 before the Principal District Munsif Court, Bhavani, for partition. The trial Court passed an ex-parte decree



CRP.(PD).No. 1960 of 2019

WEB COPY

and due to illness of the petitioner/defendant, he could not be present in Court. While pending the suit proceedings, the petitioner/defendant filed I.A.No.2007 of 2018 under Section 5 of the Limitation Act, to condone the delay in A.No.1651 of 2017 for passing final decree. After receipt of the notice, the defendant filed an application to set aside the ex-parte decree and sought to condone the delay of 405 days. Hence, the petitioner filed IA.No.2007/2018 to condone the delay and the said application was objected by the plaintiff stating that he was aware of the entire proceedings after receipt of the notice and he has been dragging on the proceedings without any reason. On considering both sides' submissions, the trial Court dismissed the application stating that there is no sufficient reason shown to condone the delay. Challenging the same, the defendant has preferred this revision.

6. Considering the facts and circumstances of the case, she being illiterate woman this Court is inclined to allow this revision though the reason assigned by her is formal one. So, the impugned order passed by the trial Court is set aside. The learned counsel appearing for the revision petitioner submitted that the petitioner was deserted by her husband and



CRP.(PD).No. 1960 of 2019

WEB COPY

living with two children without any source of income. Considering the request, the defendant is directed to file written statement and hence, the delay is condoned. The trial Court is directed to conduct trial and dispose of the suit within a period of six months from the date of receipt of a copy of this order.

7. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

18.10.2022

msm

Index : Yes/No

Speaking Order : Yes/No

To

1. The Principal District Munsif Court, Bhavani.
2. The Section Officer, V.R.Section
High Court, Madras.



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CRP.(PD).No. 1960 of 2019

T.V.THAMILSELVI, J.

msm

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