



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2022

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THE HONOURABLE **MS.JUSTICE P.T.ASHA**
C.R.P(MD)Nos.144 and 145 of 2022
and
C.M.P. (MD)No.622 of 2022

Charles Chandrasekar
Through his Power Agent
Alphonsa Rayan

... Petitioner/Respondent/ Defendant
in both petitions

Vs.

M.P.Ramasamy

... Respondent/Petitioner/Plaintiff
in both petitions

PRAYER in C.R.P.(MD)No.144 of 2022:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.59 of 2016 in O.S.No.12 of 2007, on the file of the Sub-Court, Thoothukudi, dated 26.03.2021 by allowing this Civil Revision Petition.

PRAYER in C.R.P.(MD)No.145 of 2022:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.60 of 2016 in O.S.No.12 of 2007, on the file of the Sub-Court, Thoothukudi, dated 26.03.2021 by allowing this Civil Revision Petition.

In both Petitions

For Petitioner

: M/S.P.Jessi Jeeva Priya

COMMON ORDER

The defendant is the revision petitioner before this Court, challenging the following orders :

i) C.R.P.(MD)No.144 of 2022, is filed challenging the order in I.A.No.59 of 2016 in O.S.No.12 of 2007, on the file of the Sub Court, Thoothukudi, which is an interlocutory application filed to condone the delay of 97 days in filing the restoration petition.

ii) C.R.P.(MD)No.145 of 2022, is filed challenging the order in I.A.No.60 of 2016 in the very same suit, which is an interlocutory application filed for restoration of the suit which is dismissed for default on 01.12.2014.

Since both the applications arise from a single suit, a common order



is being pronounced. The facts, in brief, are as follows:

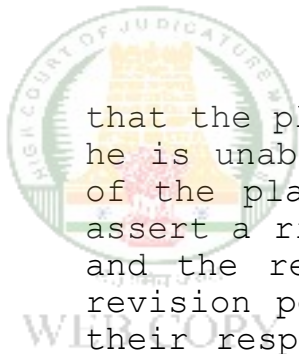
2. The respondent / plaintiff had filed the suit in O.S.No.12 of 2007, for specific performance of an agreement of sale entered into between him and the petitioner herein. The revision petitioner / defendant had filed a detailed written statement denying the claim of the respondent / plaintiff and seeking dismissal of the suit. The suit came to be dismissed for default on 01.12.2014, on the ground of non appearance of the plaintiff. Thereafter, the plaintiff has taken out these applications for a) condoning the delay of 97 days in filing the application for restoration b) to restore the suit in O.S.No.12 of 2007, dismissed for default on 01.12.2014. In the affidavit filed in support of the petitions, the petitioner would contend that he was not keeping well and was therefore unable to contact his counsel and therefore, the suit which is posted on 01.12.2014, was dismissed on the very same date.

3. The respondent had filed a counter *inter alia* contending that the plaintiff has come to the Court which is absolutely a false case. In the affidavit for condoning the delay, the reason given for the delay before the Court, is fever, whereas in the affidavit filed in support of the restoration application, the reason given was illness due to obesity. The respondent has also stated that the petitioner has been dragging on the proceedings and P.W.1 had been examined on 21.12.2011 and thereafter the matter was being adjourned continuously for the appearance of P.W.1 for completing the cross. Ultimately on 21.02.2012, the cross examination was concluded. The respondent / plaintiff, thereafter filed an application for recalling P.W.1, which was allowed and the revision petitioner / defendant had not objected to the same on 01.12.2014. Thereafter, P.W.1, did not appear and the suit was dismissed for default on 01.12.2014. The learned Subordinate Judge, Thoothukudi, on considering the applications, had allowed the said petition, aggrieved by which, the petitioner / defendant is before this Court.

4. The learned counsel for the petitioner/defendant would reiterate all the contents of her counter to the interlocutory application and would also state that the plaintiff who had originally filed the suit in the year 2004 had kept the matter pending till the year 2007. Therefore, it is clear that the only intention of the plaintiff was to protract the proceedings which is causing a great deal of hardship to the defendant. She would therefore state that the Civil Revision Petition has to be allowed and the order in the I.A.Nos.59 and 60 of 2016 be set aside.

5. Heard the learned counsel for the petitioner.

6. The plaintiff has given adequate reasons for the delay. No doubt, in one, he would state that he is suffering from Fever, however in the other one, he stated that he is dealing with illness



that the plaintiff is not keeping good health. As a result of which he is unable to appear before the Court on 01.12.2014. The reading of the plaint would also indicate that the plaintiff is trying to assert a right on the basis of an agreement entered into between him and the revision petitioner herein. The claim is refuted by the revision petitioner/defendant. Therefore, the parties have to prove their respective cases. This default is a first of this kind and therefore, the Court has adopted a more liberal approach while considering those petitions.

7. I do not find any infirmity in the order passed by the learned Subordinate Judge, Thoothukudi and accordingly, these Civil Revision Petitions are dismissed. Considering the fact that the suit is of the year 2007, the learned Subordinate Judge, Thoothukudi, shall positively disposed of the suit, on or before 31.07.2022. Consequently, connected miscellaneous petition stands closed. No costs.

Sd/-

Assistant Registrar (A.D.II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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 Subordinate Judge, Thoothukudi.

+2 CC to M/s.P.JESSI JEEVA PRIYA, Advocate (SR-3410,SR-3411[F] dated 01/02/2022)

C.R.P(MD)Nos.144 and 145 of 2022

_RD(16.02.2022) 3P 4C