



CRP(PD)(MD)No.2112 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(NPD)(MD)No.2112 of 2018 and
CMP(MD) No.9323 of 2018

Najmunnisa Begam

... Petitioner

Vs

1.M.M.Mohammad Hakim Ali

2.M.M.Mohammad Yvais

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to the fair and decreetal order, dated 16.07.2018 made in I.A.No.1 of 2018 in O.S.No.90 of 2016, on the file of the Principal District Judge, Karur and set aside the same.

For Petitioner : Mr.M.M.Iqbal

For Respondents : Mr.M.P.Senthil

ORDER

This Civil Revision Petition is filed as against the fair and decreetal order passed by the learned Principal District Judge, Karur in I.A.No.1 of 2018 in O.S.No.90 of 2016, dated 16.07.2018.



CRP(PD)(MD)No.2112 of 2018

2.The respondents/plaintiffs filed a suit in O.S.No.90 of 2016 for specific performance. The petitioner/defendant has not filed the written statement. Therefore, the suit was decreed exparte on 29.04.2017. Thereafter, the respondents/plaintiffs filed the application for execution before the same Court on 10.07.2017. The petitioner/defendant has also entered appearance in the execution proceedings on 07.09.2017. However, she filed the application to set aside the exparte decree on 11.12.2017 with a delay of 198 days that she was suffering with certain illness and due to her illness, she could not contact her counsel and could not file the application in time. The trial Court considering the fact that the petitioner has entered appearance through her counsel in the execution proceedings on 07.09.2017 and thereafter she filed the application with a delay of 198 days and dismissed the application. Aggrieved over the same, the present Civil Revision Petition is filed.

3.The learned counsel appearing for the petitioner submits that the petitioner suffered with certain illness and she has also supported the



CRP(PD)(MD)No.2112 of 2018

same with medical certificate. However, the trial Court without considering the same dismissed the application. He further submits that the petitioner is a widow and there is no one to support her to approach the counsel and file necessary application in time. The petitioner is having merits in the main suit and if the application is not allowed, she will be greatly prejudiced.

4.The learned counsel appearing for the respondents/plaintiffs submits that though the delay is 198 days, the conduct of the petitioner has to be considered. In this case, the petitioner has entered appearance in the execution proceedings on 07.09.2017 itself and contested the execution proceedings through her Advocate. Having engaged a counsel and also contested the execution proceedings effectively from the month of September 2017, this application has been filed only in the month of December 2017, which is only to evade the execution proceedings. Hence, this Civil Revision Petition is liable to be set aside.



5.This Court considered the rival submissions made and also perused the materials placed on record.

6.The respondents/plaintiffs filed the above suit in O.S.No.90 of 2016 for specific performance as against the petitioner/defendant, before the Principal District Court, Karur. Since the defendant failed to file written statement, the suit was decreed exparte on 29.04.2017. The petitioner/defendant has filed an application to condone the delay of 198 days in filing the petition to set aside the exparte decree in the month of December 2017, on the ground that she was admitted in Ganga Medical Centre & Hospital (P) Ltd, Coimbatore in the month of October 2016, due to certain illness and she was also discharged from the Hospital on 13.10.2016. Discharge Summary issued by the Hospital has also been enclosed herewith. Considering submissions made on behalf of the petitioner, the medical certificate produced by the petitioner and also the period the delay, this Court feels that the petitioner/defendant must be provided with an opportunity to defend her case in the suit.



CRP(PD)(MD)No.2112 of 2018

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7. In view of the above, this Civil Revision Petition is allowed.

The order passed by the learned Principal District Judge, Karur in I.A.No.1 of 2018 in O.S.No.90 of 2016, dated 16.07.2018 is hereby set aside. The suit in O.S.No.90 of 2016 is restored to its original position. The trial Court shall endeavour to dispose of the suit on its own merits and in accordance with law as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

26.10.2022

Index : Yes / No.

Internet : Yes / No.

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To

The Principal District Court, Karur



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CRP(PD)(MD)No.2112 of 2018

B.PUGALENDHI, J.

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CRP(NPD)(MD)No.2112 of 2018 and
CMP(MD) No.9323 of 2018

26.10.2022