



WEB COPY



C.R.P.No. 1303 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2023

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No. 1303 of 2023

and

CMP.No. 8786 of 2023

Premalatha

...Petitioner

Versus

V. Jayakumar

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the order dated 09.01.2023 in I.A.No.2 of 2022 in O.S.No. 9465 of 2011 on the file of the IV Assistant City Civil Court, Chennai.

For Petitioner : Mr.A.R.Nixon
For Respondent : Mr.S.Karthikeyan

ORDER

Heard both sides and perused the records.

2. The learned counsel for the petitioner/defendant contended that



C.R.P.No. 1303 of 2023

the petitioner was in continuous breathing complications and also the doctors advised her to take rest and warned about Covid-19 will affect easily to the people who having breathing complications. Therefore, the petitioner could not get instructions from her previous counsel and hence, the non-appearance of the petitioner before the Court below was neither willful nor wanton. Therefore, the petitioner will be put to irreparable loss and hardship if this revision is not allowed. Hence, the learned counsel prays to set aside the findings of the Court below.

3. The learned counsel for the respondent/plaintiff contended that the reason stated by the petitioner as she was continuously breathing complications, and she has not produced any medical bills in support of her case as well as the delay of each and every days/618, was not sufficiently explained by the petitioner. Therefore, the above Revision is liable to be dismissed.

4. On a perusal of the records, it is seen that the respondent/plaintiff has filed the suit in O.S.No. 9465 of 2011 before the IV Assistant City Civil Court, Chennai, for permanent injunction and mandatory injunction. The defendant has contested the suit by filing written statement denying all



C.R.P.No. 1303 of 2023

the averments made in the plaint. After perusing the records, the Court below passed an ex-parte judgment and decree dated 05.03.2020 for non appearance of the petitioner/defendant. Subsequently, the petitioner/defendant has filed IA.No. 2 of 2022 under Section 5 of the Limitation Act, seeking to condone the delay of 618 days in filing the petition to set aside the ex-parte judgment and decree dated 05.03.2020 on the ground that the petitioner/defendant was continuously breathing complications and she has not supported any documents in support of her case. Further, the delay of each and every days was not sufficiently explained. After perusing the records, the Court below dismissed the condone delay application by order dated 09.01.2023. Aggrieved by the said order, the petitioner/defendant has come forward with the present Civil Revision Petition.

5. It is also seen that the petitioner/defendant was in continues medication for her severe breathing complications, she could not appear before the Court on 30.10.2019 and could not get instructions from her previous counsel to cross-examine the PW1 on that day. However, the doctors advised her to take rest and warned about Covid-19 will affect easily to the people who having breathing complications. Further, when



C.R.P.No. 1303 of 2023

the petitioner contacted her previous counsel, the learned counsel informed

her to appoint some other counsel to conduct her case, therefore, she

engaged new counsel to conduct her case through Change of Vakalath.

Since the reasons stated above caused 618 days delay in filing the set aside

the ex-parte judgment and decree. Therefore, the above non-appearance of

the petitioner and cross-examination of the PW1 on 30.10.2019 was

neither willful nor wanton, but, due to the aforesaid *bonafide* reasons

alone. Hence, all the above aspects have to be considered as per the

Hon'ble Supreme Court guidelines, but the Court below has passed an

order without appreciating the affidavit sworn by the petitioner in respect

of sufficient cause. It is settled law, the reason assigned for the support of

the case of delay alone has to be taken into account for condone the delay.

In fact, the petitioner has produced original medical bills along with

condonation of delay application. But the documents were misplaced by

the office while hearing the argument of the counsel for the petitioner, the

documents are not traceable. The petitioner was under the Post Covid

regarding treatment for her breathing complaint. Hence, this Court

interferes with the impugned order passed by the Court below dated

09.01.2023 and in the interest of justice, this Court is inclined to allow the

above Civil Revision Petition.



C.R.P.No. 1303 of 2023

WEB COPY 6. Accordingly, the Civil Revision Petition is allowed by setting aside the impugned order passed by the Court below in I.A.No. 2 of 2022 in O.S.No. 9465 of 2011 on the file of the IV Assistant City Civil Court, Chennai. Further, the Court below is directed to complete the trial proceedings on or before 31.01.2024 without giving unnecessary adjournments to the parties concerned and pass appropriate orders in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

26.09.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
MSM

To

The IV Assistant City Civil Court,
Chennai.



WEB COPY



C.R.P.No. 1303 of 2023

V.BHAVANI SUBBAROYAN, J.

MSM

C.R.P.No. 1303 of 2023

26.09.2023