



CMP.No.18832 of 2023
in CRP.No.3496 of 2022

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T.V.THAMILSELVI, J.

This Petition has been filed to condone the delay of 99 days to file a petition to set aside the ex-parte order dated 20.12.2022 in CRP.No.3496 of 2022, on the file of this Court.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the material available on record.

3. The learned counsel for the petitioner submitted that the suit in O.S.No.159 of 2019 on the file of the Principal District Munsif and Judicial Magistrate Court, Sendurai was filed against the respondents herein seeking delivery of possession and for mesne profits. The respondents herein filed an interlocutory application in I.A.No.1 of 2019 under Order 7 Rule 11 to reject the plaint on the ground that the suit is barred by limitation. The learned trial Judge by it order dated 25.07.2022 dismissed the application



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with the finding that the issue of limitation is a mixed question of law and fact and the same has to be decided only during trial. Aggrieved by the same, the respondents herein have filed the CRP.No.3496 of 2022. Due to sudden death of her son and her old age ailment she could not engage a counsel to contest the case as a consequence of which the matter was heard and disposed of on 20.12.2022 and ex-party order was passed against her. She ought to have filed the set aside petition on or before 19.01.2023, but the same was filed on 28.04.2023. There is a delay of 99 days in filing of the set aside petition. The delay was caused on account of the fact that her son died at the relevant point of time and due to this agony the petitioner had fallen sick. If, opportunity is not given to her, she will be put to irreparable loss and great hardship. Hence, she prays to condone the delay of 99 days to set aside exparte order passed against her in the CRP.No.3496 of 2022, on 20.12.2022.

4. The learned counsel for the respondents raised strong objection to allow this petition.



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5. Even though the petitioner herein, respondent in the Civil Revision petition was not represented by a counsel at the time when the order dated 20.12.2022 was passed, the fact remains that the order dated 20.12.2022 was passed on merits by appreciating the applicability of Order VII Rule 11 of CPC as well as the delay in institution of the suit. Thus, the order dated 20.12.2022 passed by the trial Court, rejecting the plaint, was the one passed on merits and it was not an ex-parte order. Therefore, the question of condonation of delay in filing an application to set aside the order dated 20.12.2022 will not arise in this case.

6. Accordingly, this Civil Miscellaneous petition is dismissed.

03.11.2023

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