



C.R.P(NPD)No.2456 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition (NPD) No.2456 of 2021
and C.M.P.No.18564 of 2021

1.Ruby Jayanthi

2.S.Mohan Gabriel

...

Petitioners

Vs.

G.Sitalakshmi

...

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India praying to allow the Civil Revision Petition setting aside the fair and decreetal order of the learned Additional Subordinate Judge at Kanchipuram dated 07.09.2021 in I.A.No.177 of 2016 in O.S.No.194 of 2009.

For Petitioners : Mr.S.Subramanian

For Respondent : Mr.C.Harini

ORDER

This Civil Revision Petition has been filed to allow the Civil Revision Petition setting aside the fair and decreetal order of the learned Additional



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Subordinate Judge at Kanchipuram dated 07.09.2021 in I.A.No.177 of 2016
in O.S.No.194 of 2009.

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2. Learned counsel for the revision petitioners submitted that the revision petitioners are the defendant in the suit in O.S.No.194 of 2009, which was originally filed by the respondent for specific performance against the petitioners to execute and register the sale deed in favour of her and also for permanent injunction restraining the petitioners and their men and agents from in any way either alienating or encumbering the plaint schedule mentioned properties to any third party, however, on the date of final disposal, the respondent was called absent. Hence, the suit was dismissed for default on 25.04.2014.

2.1. Learned counsel for the petitioner further submitted that the respondent has filed an application in I.A.No.177 of 2016 on 11.01.2016 under section 5 of the limitation Act to condone the delay of 601 days in filing the petition to restore the suit, which was dismissed for default on 25.04.2014. In the affidavit filed in support of the petition, it has been stated that the respondent was sick and taking treatment for the illness such as



deficiency in vitamin, fatty liver, hemoglobin and pancreas infection and due to these reasons, the respondent could not appear before the Trial Court on 25.04.2014. They have also filed a medical prescription dated 05.03.2015 and the medical certificate dated 05.01.2016, before the Trial Court, which were marked as Ex.P.1 and P.2, without any evidence adduced by the doctor.

3. Learned counsel for the petitioner further submitted that in the affidavit, the respondent has stated that she has undergone treatment for the illness such as deficiency in vitamin, fatty liver, hemoglobin and pancreas infection, whereas, Medical Certificate dated 05.01.2016, which was marked as Ex.P.2 discloses some other disease. On relying these documents, the Trial Court has allowed the application in I.A.No.177 of 2016 on 07.09.2021 with a condition of payment of cost of Rs.1500/- to the petitioners on or before 19.09.2021, failing which, the petition has been dismissed automatically and adjourned the case on 20.09.2021. Aggrieved by this order, the petitioners have come forward with the present Civil Revision Petition.

4. Per contra learned counsel appearing for the respondent submitted that the suit has been filed for specific performance and the sale consideration



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as per the agreement is for a sum of Rs.3,65,000/- out of which, Rs.1,51,000/- has been paid as advance and subsequently, the payments were made and remaining balance to be paid is only a sum of Rs.64,000/-. The payments made by the respondent was also admitted by the petitioners in the written statement filed by them on 07.09.2009.

5. Learned counsel appearing for the respondent submit that the non-appearance of the respondent before the Trial Court on 25.04.2014 is due to the bonafide reason of illness, which is supported by documents viz., Ex.P.1 - Medical prescription dated 05.03.2015 and Ex.P.2 - Medical Certificate dated 05.01.2016 respectively, before the Trial Court. On considering the medical documents submitted by the respondent, the Trial Court has allowed the petition filed under section 5 of the limitation Act to condone the delay of 601 days in filing the restoration application to restore the suit, which was dismissed for default on 25.04.2014.

6. Heard the learned counsel on either side and perused the materials available on record.



7. The I.A.No.177 of 2016 has been filed by the respondent to condone the delay of 601 days in filing the restoration application to restore the suit, which was dismissed for default on 25.04.2014 only on the ground of illness and submitted that the treatment taken by the respondent was on 25.04.2014, the date on which the suit was dismissed for default.

8. Further, there is no mentioning about the period of treatment, which has been undergone by the respondent in the documents Ex.P.1 - Medical Prescription dated 05.03.2015 and Ex.P.2 - Medical Certificate dated 05.01.2016, filed in support of above reason. Moreover, the nature of illness mentioned in the affidavit, filed in support of the application is different to that of illness mentioned in Ex.P.2 – Medical Certificate dated 05.01.2016.

9. The Trial Court allowed the application that no prejudice will be caused to any manner to the petitioners because, they will be given opportunity during the cross examination on their side. This apart, though the petitioners have denied the documents filed by the respondent is the forged one, but has not proved the same and also considered the nature of suit between the parties and on technical reasons by way of delay, substantial



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right of the parties not to be defeated. Hence, it is clear and evident from the affidavit filed in support of the application that the respondent had some illness and was undergone treatment for the same and the Trial Court relying on this has allowed the application on payment of cost of Rs.1500/- to the petitioners.

10. In view of the above, this Court do not find any reason to interfere with the order passed by the Trial Court in I.A.No.177 of 2016 in O.S.No.194 of 2009 dated 07.09.2021 and the same is hereby confirmed.

11. In the result, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

22.12.2023

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No



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