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C.R.P.No.2106 of 20__



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

**C.R.P.No.2106 of 2023
and
C.M.P.No.12855 of 2023**

B.Muniammal

... Petitioner

Vs.

M.Swaminathan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the decreetal and fair order passed in I.A.No.247 of 2017 in I.A.No.292 of 2015 in O.S.No.28 of 2009 on the file of the Additional District Judge, Kancheepuram District at Chengalpattu dated 04.07.2022 in dismissing the application duly taken out under Section 151 CPC, for re-opening I.A.No.292 of 2015 in O.S.No.28 of 2009 for extension of time for payment of costs.

For Petitioner : Mr. D.Ashok Kumar



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ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 04.07.2022 passed in I.A.No.247 of 2017 in I.A.No.292 of 2015 in O.S.No.28 of 2009 on the file of the Additional District Court, Kancheepuram District at Chengalpattu.

2. The petitioner is the plaintiff and the respondent is the defendant in the suit.

3. The petitioner/plaintiff filed the suit in O.S.No.28 of 2009 for passing a preliminary decree for partition in the suit property and to appoint an Advocate Commissioner to divide the suit property by metes and bounds and allot her half share separately and for separate possession. Further, the said suit has been dismissed for default on 08.12.2014. Thereafter, the petitioner filed an application in I.A.No.292 of 2015 for restoration of the said suit under Order IX Rule 9 of CPC and the said I.A has been posted for orders on 19.02.2016 and the petitioner noted the hearing date from online as 08.03.2016. On 08.03.2016, the petitioner expected that the Court would pass order in the said petition. Due to illness, the petitioner had not seen the



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'A' diary till 11.03.2016 and thereafter, the petitioner saw the 'A' diary on 19.02.2016. The trial Court has passed the order to pay costs of Rs.750/- to the respondent on or before 07.03.2016. Subsequently, on 09.03.2016, the trial Court closed the said application as costs had not been paid. Thereafter, the petitioner filed another application in I.A.No.247 of 2017 to reopen the said I.A.No.292 of 2015, which was closed on 09.03.2016 for extension of time for payment of costs, which had been dismissed by the trial Court. Aggrieved by the same, the petitioner filed the present Civil Revision Petition.

4. The learned counsel for the petitioner submitted that the petitioner/plaintiff is ready and willing to pay the costs to the respondent and she had been misled by the e-Court communication from online as the caption that had been shown was 'enquiry' on 08.03.2016. Further, it has been shown as 09.03.2016 for enquiry and hence, non-payment of costs is a bona-fide mistake and therefore, no laches can be attributed to the petitioner. He further submitted that the petitioner is the house-wife and an illiterate woman and she had been misled by the postings through on-line and in the process, she had not been explained the particulars of the orders



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in time and hence, she had been made as a scapegoat and in the process, her valuable property is sought to be knocked away. The petitioner's counsel is practising in various Courts and he has failed to intimate her in time, as otherwise, the payment of costs at Rs.750/- is not such a big thing for her and if she had been informed, she would have paid the same in time. Hence, the learned counsel for the petitioner prays to set aside the impugned order passed by the trial Court.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. On a perusal of records, it is seen that the suit filed by the plaintiff has been dismissed twice, though the petitioner filed the restoration petition before the Court below for the plaintiff failed to pay the costs imposed by the Court below and thereby, the Court below dismissed the suit on the ground of non payment of costs and for not complying with the conditional order passed by the Trial Court. The attitude of the petitioner clearly shows that she is not interested to proceed with the case and wantonly allowed to be suit dismissed. Therefore, the reason adduced in the affidavit of the



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petitioner is also not satisfactory. Hence, there is no irregularity or infirmity in the impugned order passed by the trial Court. Therefore, this Civil Revision Petitions fails and the same is liable to be dismissed.

7. Accordingly, this Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

05.07.2023

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

The Additional District Judge, Kancheepuram District
at Chengalpattu.



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V.BHAVANI SUBBAROYAN,J.

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