



CRP. No.2846 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 25.08.2023**

**CORAM:**

**THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI**

**CRP. No. 2846 of 2017**

S.Sadakathullah

...Petitioner

Vs.

1.M.Rahamathullah

2.M.Selavam

...Respondent.

**PRAYER :** This Civil Revision Petition is filed under Section 115 of CPC, to set aside the fair and decreetal order dated 06.06.2017 made in I.A No. 731 of 2014 in O.S No. 754 of 2008.

For Petitioner : Mrs. Shase

For R1 : Give up

For R2 : Mr.K.Balasubramaniam



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**ORDER**

**WEB COPY** This petition has been filed to set aside the fair and decreetal order dated 06.06.2017 passed by the I Additional District Judge, Coimbatore, in I.A No. 731 of 2014 in O.S No. 754 of 2008.

2. The revision petitioner along with second respondent herein filed a suit against the second respondent herein in the year 2008 and the said suit was dismissed for default in the year 2009 for the reason that the plaintiffs failed to pay batta in order to issue the summons to the defendant and also there was no representation on his behalf. Hence the petitioner herein and second respondent herein filed I.A No. 731 of 2014 in O.S No. 754 of 2008 for condonation of dealy in filing the petition and to restore the suit.

3. The learned counsel for the petitioner herein submitted before the Trial Court that due to ill health petitioner has not able to move and give proper instruction to his counsel. Hence, his absent is neither wilfull nor wanton, prays to restore the suit by condoning the delay of 1744 days under Section 5 of Limitation Act.

4. The learned counsel for the respondent raised strong objection stating that alleged sale agreement relied by the plaintiffs in suit was fradaulently created by them as they have no case they voluntarily allowed



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the suit for default. Now without any proper reason and sufficient materials the plaintiffs wants to restore the suit and also he was hale and healthy at that time.

5. Considering the submissions on either side the Court below held that there is no material or evidence produced on the side of the plaintiffs to show his health condition during that time. Accordingly application for restoration is dismissed.

6. Challenging the same the first plaintiffs/revision petitioner filed this petition .

7. The learned counsel for the petitioner submitted that the Trial Court failed to appreciate the disability certificate issued by the doctor and also not consider the health condition of the petitioner in spite of that the Court below dismissed the restoration petition as such is misconception of law and facts. Hence he prayed to allow this petition.

8. The learned counsel for the second respondent submitted that the petitioner was hale and healthy at that time of the suit proceedings and purposefully failed to file restore petition within a limitation period. Further, he colluded with the second plaintiff/ first respondent herein they created a forged document based upon that they are claiming relief for



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specific performance and they are not ready to contest the suit.

Subsequently, with an ulterior motive they filed this application. He prayed to dismiss the petition.

9. Considering the submissions on either side, and also on perusal of records the suit was filed in the year of 2008 for the relief of specific performance based on the alleged sale agreement dated 04.08.2005. Even prior to the present suit already the plaintiff filed O.S No. 2378 of 2008 against the defendant wherein the defendant also denied the said sale agreement as forged document but not bind, hence said suit was dismissed for default. Thereafter the present suit was filed in the year 2008 and till 2009 the petitioner has not taken any steps to pay batta to issue summons to the defendant, hence the Trial Court dismissed the suit for default in the year 2009. Thereafter the petitioner filed a petition to restore the suit in the year 2014 after 1744 days and also stated that he was suffered with ill health and not able to move to that effect he produced the medical certificates/ Ex.B1 but the said medical certificate did not disclose the health condition of the petitioner. Further, during the cross examination of P.W.1, he admits that he has gone to chennai to sent his relative for Haj Pilgrimage



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which itself shows that he was hale and healthy at that time of the suit proceedings. Therefore the Trial Court rightly dismissed the application that the petitioner was not taken steps to restore the suit immediately within the limitation period. Besides, in earlier suit filed against the defendant, the petitioner not taken steps to issue summons which itself shows that he is not interested to proceed with the suit. In order to drag on the proceedings the petitioner filed this petition. Accordingly, this petition is dismissed.

10. In result, the Civil Revision petition is dismissed. No cost. Consequentially, connected miscellaneous petition is closed.

**25.08.2023**

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**T.V.THAMILSELVI,J.**

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