



C.R.P(NPD)No.4260 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

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

Civil Revision Petition (NPD) No.4260 of 2019

Pottiammal ... Petitioner

Vs.

Subramanian ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order and decretal order dated 14.08.2019 passed in I.A.No.169 of 2019 in O.S.No.63 of 2012 on the file of the District Munsif Court, Sankarapuram and prays that the civil revision be allowed with costs throughout.

For Petitioner : Mr.A.Arunbabu

For Respondent : Mr.P.Valliappan,
Senior Counsel
for Mr.N.Loganathan

ORDER

The present Civil Revision Petition has been filed to set aside the order



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and decreetal order dated 14.08.2019 passed in I.A.No.169 of 2019 in O.S.No.63 of 2012 on the file of the District Munsif Court, Sankarapuram and prays that the civil revision be allowed with costs throughout.

2. Learned counsel for the petitioner submitted that the petitioner/plaintiff has filed a subject matter suit O.S.No.63 of 2012 for permanent injunction, restraining the respondent/defendant from interfering petitioner's possession and enjoyment of the plaint suit property on the file of the District Munsif Court, Sankarapuram. However, the said suit was dismissed for default on 21.06.2017. In order to restore the same, the petitioner has filed a restoration petition in I.A.No.169 of 2019 with condoning the delay of 213 days for filing the petition.

3. Learned counsel for the petitioner further submitted that when the I.A.No.169 of 2019 was taken up for hearing, the petitioner submitted that she was suffering from jaundice and could not attend the Court on the date of dismissal of the suit i.e., on 21.06.2017, however, the said application was dismissed on 14.08.2019 stating that though the petitioner was suffering from



jaundice, she has not submitted any oral and documentary evidence to prove that she was suffering from jaundice and also failed to furnish the particulars like where she has undergone treatment and the name of the doctor, who treated her. Hence, the petitioner/plaintiff has come forward with the present Civil Revision Petition to set aside the order and decreetal order dated 14.08.2019 passed in I.A.No.169 of 2019 in O.S.No.63 of 2012 on the file of the District Munsif Court, Sankarapuram.

4. Learned counsel appearing for the respondent submitted even it was stated in the affidavit that the petitioner was suffering from jaundice and has undergone treatment, no proof was filed to substantiate the same. Hence, the Trial Court has rightly dismissed the restoration petition in I.A.No.169 of 2019 with condoning the delay of 213 days.

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

6. The petitioner/plaintiff has filed a suit for permanent injunction



restraining the respondent/defendant from interfering petitioner's possession and enjoyment of the plaint suit property on the file of the District Munsif Court, Sankarapuram. Since the petitioner/plaintiff was not present on 21.06.2017, the Trial Court has dismissed the suit for default. Hence, the petitioner/plaintiff has filed a restoration petition in I.A.No.169 of 2019 with a petition to condone the delay of 213 days. Though the petitioner stated that she was suffering from jaundice at that point of time, the said I.A.No.169 of 2019 was dismissed for not furnishing any proof to substantiate that the petitioner was suffering from jaundice and undergoing treatment.

7. Though the petitioner has not furnished any particulars to substantiate her claim that she was suffering from jaundice, this Court is inclined to consider the reason given by the petitioner that she was suffering from jaundice and allow the petition on payment of cost of Rs.3000/- to the respondent. Therefore, on earlier occasion i.e., 03.11.2023, this Court has directed the learned counsel for the petitioner to get instruction in regard to the payment of above costs of a sum of Rs.3000/- to be paid to the respondent for allowing the application I.A.No.169 of 2019 in O.S.No.63 of 2012.



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8. Today, when the matter was taken up for hearing, learned counsel for the petitioner submitted that he has already paid a sum of Rs.3000/- to the learned counsel appearing for the respondent and he has also produced a copy of the letter dated 16.11.2023 before this Court along with an endorsement made by the learned counsel appearing for the respondent that the cost of a sum of Rs.3000/- has received on 16.11.2023.

9. Learned counsel appearing for the respondent has also acknowledged the aforesaid letter dated 16.11.2023 produced by the learned counsel for the petitioner.

10. In view of the above facts and circumstances of the case, the order and decreetal order dated 14.08.2019 passed in I.A.No.169 of 2019 in O.S.No.63 of 2012 on the file of the District Munsif Court, Sankarapuram is set aside and the I.A.No.169 of 2019 in O.S.No.63 of 2012 is allowed by this Court.



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11. In the result, the present Civil Revision Petition stands allowed.

No costs.

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

J.SATHYA NARAYANA PRASAD,J.

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