



C.R.P.(MD) No.294 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) No.294 of 2023

Susiladevi

... Petitioner

Vs.

Vijayan

Selvaraj (Died)

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 05.09.2022 passed in I.A.No.2 of 2019 in unregistered C.M.A. of 2019 on the file of the Sub Court, Vallioor.

For Petitioner : Mr.S.Kishore Kumar

For Respondent : Mr.S.Sureshmanikam

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 05.09.2022 passed by the Sub Court, Vallioor in I.A.No.2 of 2019 in unregistered C.M.A. of 2019.



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2. By the impugned order dated 05.09.2022, the Sub Court, Vallioor has dismissed I.A.No.2 of 2019 filed by the petitioner under Order 41 Rule 3 of Code of Civil Procedure read with Section 5 of the Limitation Act, 1963, for condonation of delay of 44 days in filing the C.M.A.

3. The petitioner was the plaintiff before the Trial Court in O.S.No. 137 of 2010. The said suit was filed for a permanent injunction. The said suit was dismissed for non-appearance on 05.06.2016 of the petitioner. Therefore, the petitioner filed I.A.No.123 of 2016 under Order 9 Rule 9 of Code of Civil Procedure, 1908 to restore the suit to the file of the said Court. The I.A.No.123 of 2016 was also dismissed on 02.03.2019 even though there was no delay in filing the application for restoration of the suit to the file of the said court.

4. The petitioner thereafter filed appeal against the order passed by the Trial Court dismissing the application with delay of 44 days. Thus, the petitioner has filed I.A.No.2 of 2019 to condone the delay of 44 days in filing the appeal against the order dated 02.03.2019 in I.A.No.123 of 2016 before Sub Court, Vallioor.



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5. The Court has dismissed the I.A.No.2 of 2019 filed for condonation of delay of 44 days in filing the appeal on the ground that the petitioner has not established that she suffered from knee pain and therefore was immobilized and was unable to file appeal in time. It is submitted that the Trial Court has committed a grave error in dismissing the I.A. for condonation of delay of 44 days in filing the appeal. The learned counsel for the petitioner therefore prays for interference.

6. Opposing the prayer, the learned counsel for the respondent submits that the impugned order is well reasoned and requires no interference. It is submitted that wrong reason has been stated and has been rightly rejected by the Trial Court and is therefore prayed for dismissal of the present Civil Revision Petition.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

8. The suit has been dismissed for non prosecution on 05.06.2016. The petitioner thereafter filed I.A.No.123 of 2016 for restoration of suit in time. However, the said I.A. was dismissed on 02.03.2019 perhaps on



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account of the fact that the petitioner has not made out a sufficient ground for restoration of suit to the file of the said Court. The petitioner should have filed the appeal within a period of 30 days from the date of dismissal of the said I.A.No.123 of 2016 under Order 9 Rule 9 of Code of Civil Procedure, 1908 for restoration of suit.

9. However, there was a delay of 44 days in filing the appeal and therefore I.A.No.2 of 2019 was filed for condonation of delay. While filing the I.A.No. 2 of 2019 for condonation of delay, the petitioner has not given sufficient reasons for the Court to condone the delay.

10. The Courts are however not concerned with the length of the delay. Even if there is an enormous delay, Courts condone the delay if there are sufficient reasons to condone the delay. Only reason given by the petitioner is that she suffered from knee pain. The petitioner has not produced any documents to substantiate the same. It appears that the petitioner is from a rustic background and is uneducated. Therefore, some amount of latitude can be extended to the petitioner for not giving proper reasons while filing the application for condonation of delay in filing the appeal. The delay in filing the appeal is only 44 days.



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11. Considering the same, Court is inclined to allow this Civil Revision Petition on terms. The petitioner shall deposit a sum of Rs.1,500/- to the Madurai Bench of Madras High Court Bar Association, Madurai within a period of 30 days from the date of receipt of a copy of this order, failing which, this order shall stand vacated automatically. The petitioner shall file a proof of payment before the Sub Court, Vallioor.

12. On such payment to the Madurai Bench of Madras High Court Bar Association, Madurai, I.A.No.2 of 2019 filed by the petitioner for condonation of delay of 44 days in filing the appeal shall stand allowed. The Sub Court, Vallioor shall thereafter number the appeal and dispose of the same on merits and in accordance with law, within a period of 6 months thereafter.

13. Accordingly, this Civil Revision Petition is allowed subject to the above terms. No cost.

15.06.2023

NCC : Yes/No
Internet: Yes/No
Index: Yes/ No
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C.SARAVANAN, J.

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To
The Sub Court, Vallioor.

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