



C.M.P(MD)No.1890 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.P(MD)No.1890 of 2020
in
C.R.P(MD)SR.No.9571 of 2020

C.M.P(MD)No.1890 of 2020:

Santha

... Petitioner/Petitioner

Vs.

B.Dhiraviam

...Respondent/Respondent

PRAYER : Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act, to condone the delay of 1456 days in filing the civil revision petition against the order in I.A.No.81 of 2015 in O.S.No.60 of 2009 on the file of the District Munsif cum Judicial Magistrate, Vadipatti, Madurai District.

For Petitioner : Mr.S.Mohamed Sherbudeen

For Respondent : Mr.S.Vellaichamy



C.M.P(MD)No.1890 of 2020

WEB CC **C.R.P(MD)SR.No.9571 of 2020:**

Santha

... Petitioner/
Plaintiff

Vs.

B.Dhiraviam

...Respondent/
Defendant

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., to call for the records and to set aside the order passed in I.A.No.81 of 2015 in O.S.No.60 of 2009 on the file of the District Munsif Cum Judicial Magistrate, Vadipatti, Madurai District, dated 21.11.2015.

For Petitioner : Mr.S.Mohamed Sherbudeen

For Respondent : Mr.S.Vellaichamy

ORDER

The present civil miscellaneous petition has been filed to condone the delay of 1456 days in filing the civil revision petition against the order, dated 15.12.2014 in I.A.No.81 of 2015 filed by the petitioner to

2/7



C.M.P(MD)No.1890 of 2020

restore the suit in O.S.No.60 of 2009, which was dismissed for non-prosecution on 28.04.2014.

2. It is the specific case of the petitioner that the petitioner is a destitute women from Nayakkar New Street (Sadayandi Kovil near) Thathampatty, Vadipatti Post. It is submitted that the petitioner's husband, namely, Thirumalaisamy had rented out the petty shop measuring 10 X 12.5 square feet to the respondent in the year 2002 and that her husband has also passed away in the same year.

3. It is the further case of the petitioner that initially the respondent was required to pay a rent of Rs.150/- per month, which was enhanced up to Rs.400/- per month which was paid up to a point of time. However, the respondent defaulted in paying the rent after the Month of June 2007. Hence, the petitioner was constrained to file O.S.No.60 of 2009. The suit was dismissed on 28.02.2014 as the petitioner was unable to appear before the Court. The petitioner also filed I.A.No.81 of 2015 on 15.12.2014 explaining sufficient reasons for non-appearance. However,

3/7



C.M.P(MD)No.1890 of 2020

the Court without considering the request of the petitioner dismissed the I.A.No.81 of 2015 on 21.11.2015 filed under Order 9 Rule 9 of C.P.C. without proper reasons. It is submitted that the petitioner was not the reason for the delay.

4. Now, the petitioner has filed this Civil Miscellaneous Petition to condone the delay of 1456 days. The reasons stated in the affidavit filed in support of the present petition reads as under:

"6. I submit that, after filing the restore petition, my counsel before the trial Court informed that he will inform when my presence is necessary before the Court. I am a widow and my husband died in the year 2002 and there is no issue between us. Without any manly support I fully believed my counsel with impression that my counsel will inform the status of the case. But my trial Court counsel failed to inform the dismissal of the restore petition. Now first week of January 2020 I enquired and came to know about the fate of the case and after getting change of vakalat I engaged present counsel and get the certified copies and come forward with the present civil revision petition with the delay of 1456 days.

7. I submit that, the delay of 1456 days is happened beyond my control and there is no malafideness on my side. The delay is neither willful nor wanton and it was happened beyond my control. I am an illiterate widow and no one take care of me from the side ordeal and due to my situation the said delay are happened. The respondent without paying rent from May 2007



C.M.P(MD)No.1890 of 2020

enjoying the suit premises and the said property is only the source of income to me. Thus in the interest of justice, it is just and necessary to condone the delay of 1456 days in filing the civil revision petition against the order in I.A.No.81 of 2015 in O.S.No.60 of 2009 on the file of the District Munsif Cum Judicial Magistrate, Vadipatti, Madurai District. Otherwise, I will be put to great hardship. Thus I have to be given opportunity to contest the suit on merit."

A reading of the above indicates that the petitioner has not been diligent in pursuing with the legal remedy.

5. The petitioner has inherited the property of her husband after the death of her husband. The delay has not been properly explained. Therefore, the impugned order dismissing the prayer for condonation of delay does not call for interference. No prejudice will be caused to the petitioner as there is a continuing cause of action against the respondent for continuing default. The petitioner can initiate fresh proceeding to recover the arrears and for evicting the respondent.

6. Considering the above, I am inclined to dismiss the present Civil Miscellaneous Petition. However, liberty is given to the petitioner



C.M.P(MD)No.1890 of 2020

to file a fresh suit for ejectment as the rents are reportedly not being paid
by the respondent to the petitioner.

7. The present Civil Miscellaneous Petition stands dismissed with
the above liberty. Consequently, C.R.P(MD)SR.No.9571 of 2020 also
stands dismissed. No costs.

20.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

The District Munsif Cum Judicial Magistrate,
Vadipatti, Madurai District.



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C.M.P(MD)No.1890 of 2020

C.SARAVANAN ,J.

SN

Order made in
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in
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