



C.R.P(MD)No.435 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **14.08.2023**

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.435 of 2019

A.Karpagam

...Petitioner/Petitioner/
Plaintiff

Vs.

1.P.Muthulakshmi

2.K.Kanagaraj

...Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition is filed under Article 115 of the Constitution of India, to set aside the fair and decreetal order, dated 29.01.2019 in I.A.No.499 of 2016 in O.S.No.135 of 2013 on the file of the Additional District Munsif Court, Sankarankovil.

For Petitioner : Mr.V.Meenakshisundaram

For R1 : Mr.R.J.Karthick

For R2 : No Appearance



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ORDER

The civil revision petition has been filed against the order passed by the Additional District Munsif Court, Sankarankovil in I.A.No.499 of 2016 in O.S.No.135 of 2013, dated 29.01.2019.

2. The petitioner herein is the petitioner/plaintiff and the respondents herein are the respondents/defendants before the Court below.

3. For the sake of convenience, the parties will be referred as per the litigative status before the trial Court.

4. The learned counsel for the petitioner submits that, the plaintiff has filed a suit for declaration and for a consequential permanent injunction in respect of issuance of patta in the name of the defendants. He would submit that on 03.07.2014, the plaintiff did not receive any communication from her counsel, as she was away from his home town, on account of his avocation. Since she did not appear on the above dates, the suit was dismissed on 03.07.2014. When she came to know about the dismissal order, and when she filed an application for restoration of the suit, there was a delay of 786 days. It is also the submission of the

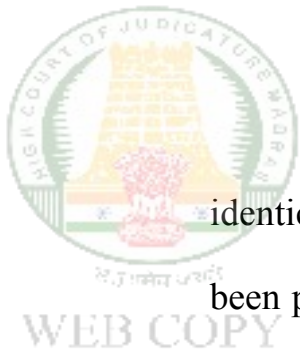


learned counsel for the petitioner that the first defendant has filed a similar suit in O.S.No.212 of 2016. Wherein, the petitioner herein is the first defendant and that the suit is at the part heard stage.

5. Per contra, the learned counsel for the respondents submits that the very reason assigned by the petitioner/plaintiff in her affidavit that she came to know about the dismissal order during the year 2016 is false. He would further submit that even during the year 2014, there was a complaint by the respondents against the petitioner and that the petitioner had knowledge about the dismissal of the suit. Therefore, according to the respondents, the petitioner has falsely sworn in the affidavit. Therefore, they prayed to dismiss the application.

6. I have given my anxious consideration to either side submissions.

7. The learned counsel for the petitioner strongly objected the statement that there was false affidavit, however, fairly conceded that there was a delay in filing the present petition from the date of police complaint against him on 18.11.2014. However, the learned counsel for the petitioner would fairly submits that since there was a similar and



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identical suit in O.S.No.212 of 2016, wherein, this petitioner has already been party to the suit and contesting the same, she prayed to give liberty to raise all the defences, which has been raised in the present suit.

8. It is pertinent to mention here that, whenever a suit has been filed, the same can be defended based upon the pleadings, which had been put-forth in the written statement. Therefore, it is apprehended on the part of the learned counsel for the petitioner that if any adverse order passed in the interlocutory application, the same would hamper his defence in O.S.No.212 of 2016.

9. From the perusal of the affidavit and also from the submission of the learned counsel for the respondents, admittedly, there was no reason for the delay from the knowledge of dismissal qua from 18.11.2012, till the filing of the application. Therefore, this Court could not find any justification in allowing the civil revision petition. As such reason found by the Court below is justifiable. However, as prayed by the learned counsel for the petitioner, this Court records that the dismissal order in the present civil revision petition is no way affect his rights, which she is agitating in O.S.No.212 of 2016.



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10. In the result, this civil revision petition stands **dismissed**. No costs.

14.08.2023

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

- 1.The Additional District Munsif Court,
Sankarankovil.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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