



C.R.P.(MD).No.2184 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON: 14.02.2023

DELIVERED ON: 20.02.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.2184 of 2022

and

CMP(MD).No.10174 of 2022

Eswari

....Petitioner

Vs

1.Rasuvadan

2.Senrayan

3.Thangaraj

...Respondents

PRAYER: Civil Revision Case is filed under Section 115 of C.P.C, to set aside the fair and decreetal order dated 22.12.2021 in I.A.No.1 of 2020 in Unnumbered A.S.No. Of 2021 on the file of the Subordinate Court, Theni in O.S.No.56 of 2011 dated 14.03.2018 made on the file of the District Munsif Cum Judicial Magistrate, Aundipatti.

For Petitioner : Mr.B.Rajesh Saravanan



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ORDER

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The above revision has been filed by challenging rejection of condone delay application to condone the delay of 851 days in filing the first appeal.

2.The revision petitioner herein as plaintiff had filed O.S.No.56 of 2011 on the file of the District Munsif Cum Judicial Magistrate Court, Aundipatti for the relief of permanent injunction. The said suit was dismissed on merits on 14.03.2018. The petitioner had filed I.A.No.1 of 2020 before the Subordinate Court, Theni to condone the delay of 851 days in filing the first appeal.

3.In the condone delay application, the petitioner has contended that due to family circumstances, she had gone to Kerala for attending Coolie work and she was also affected with joint pain and hence, she could not contact her counsel for filing the first appeal. She could meet her counsel only on 17.11.2020 for filing the above appeal and this has resulted in delay of 851 days.



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4.The respondents herein had filed a counter disputing the reasons assigned by the petitioner for filing the first appeal with delay. The First Appellate Judge refused to accept the reasons and rejected the application for condoning the delay. As against the same, the present civil revision petition has been filed.

5.The learned counsel for the petitioner had strenuously contended that the petitioner being a lady, she had gone to Kerala to attend Coolie work along with her family members. She was affected with joint pain in Kerala and hence, she could not return home to give proper instruction to her Counsel for filing the first appeal. He had further contended that the revision petitioner has got a meritorious case. Unless the first appeal is decided on merits, she will be put to great hardship.

6.I have considered the submissions made on the side of the petitioner and also perused the affidavit and petition filed for condoning the delay in filing the first appeal.

7.A perusal of the records indicate that the suit was dismissed by the trial Court on 14.03.2018 and the petitioner has admitted in her affidavit that she had received the order copy on 21.06.2018. It has not been explained by the petitioner on what date she had left for Kerala and



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when she had returned from Kerala. However, I.A.No.1 of 2020 has been filed only on 18.11.2020.

8.The delay of 851 days has not been properly explained except the vague reason that she had left for Kerala and she got affected with joint pain. When the petitioner has received the order copy on 21.06.2018, for the reasons best known to her, she had left for Kerala without filing the appeal. There are no records to establish that she had left for Kerala or she was affected with knee pain. Therefore, this Court does not find any illegality or infirmity in the order passed by the First Appellate Court in refusing to condone the delay of 851 days.

9.In view of the above said facts, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.02.2023

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



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To

- 1.The Subordinate Judge, Theni
2. The District Munsif Cum Judicial Magistrate,
Aundipatti.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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Pre-delivery order made in
C.R.P.(MD).No.2184 of 2022
and
CMP(MD).No.10174 of 2022

20.02.2023