



CRP (MD) No.1759 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 17.08.2023

**Pronounced on:
13.12.2023**

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

**C.R.P.(MD) No.1759 of 2023
and
C.M.P(MD)No.8789 of 2023**

1. Sugirthavalli (died)
Jeyakaran Selvathass

2. Jonathan Gnanadas

... Petitioners

Versus

Jamila Packiavathi

... Respondent

Prayer : The Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the judgment and decree made in I.A. No.1 of 2021 dated 20.03.2023 in O.S. No.22 of 2015 passed by the learned Additional Subordinate Judge, Tenkasi.

For Revision Petitioners : Mr. D. Selvanayagam

For Respondent : No appearance.



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ORDER

This Civil Revision Petition is preferred as against the order dated 20.03.2023 passed by the learned Additional Subordinate Judge, Tenkasi in I.A. No.1 of 2021 in O.S. No.22 of 2015.

2. According to the Revision Petitioners, the respondent as plaintiff filed the above suit in O.S. No.22 of 2015 against the petitioners for partition. Since the respondent/plaintiff failed to appear, the suit was dismissed for default on 13.08.2018. Thereafter, the respondent/plaintiff filed an application in I.A. No.1 of 2021 to condone the delay in filing the petition for restoration of suit and the same was dismissed on 23.11.2018. Again the respondent / plaintiff filed an another restoration petition after a huge delay. The said petition was returned for compliance within 30 days from the date of return. The respondent / plaintiff failed to comply with the conditions and then, after a long delay of 882 days, she re-submitted the restoration petition. The petitioners have filed a detailed counter praying for dismissal of the condone delay petition in filing the restoration petition.



However, the learned Additional Subordinate Judge, Tenkasi without going into the merits of the case, allowed the condone delay petition filed by the respondent herein. It is further submitted that the respondent wantonly stayed away from attending the Court on 13.08.2018 and also involved in fraudulent creation of documents in support of the suit property. Since the respondent / plaintiff could not succeed in creating fraudulent documents, came forward with the present vexatious petition in order to escape from the clutches of criminal case. She had approached the Court with unclean hands. She had also executed fraudulent settlement deed in favour of her husband. FIR was also registered against the respondent / plaintiff based on the complaint lodged by the petitioners. However, the Trial Court failed to consider the above facts and erroneously allowed the condone delay petition in filing the restoration petition filed by the respondent / plaintiff.

3. The learned counsel appearing for the Revision Petitioners would submit that application under Order-IX Rule-9 of the C.P.C. ought to have been filed within 30 days from the date of dismissal of the suit for default. If any application is filed beyond the period of 30 days, an



application under Section 5 of the Limitation Act should have been filed along with the restoration petition. In this case, the plaintiff / respondent claimed that she has filed application under Order-IX Rule-9 C.P.C only on 28.03.2018 and nothing was averred in the petition about filing of the petition for condoning the delay. The suit was dismissed on 13.08.2018 and the application for restoration was filed only on 28.03.2019, which is clearly after 30 days. The said application ought to have been filed along with condone delay petition. However, the learned counsel would further submit that the respondent / plaintiff knowing well that the suit in O.S. No.22 of 2015 was dismissed on 13.08.2018 and the same was not restored till 22.09.2020, but still she had settled one portion of the suit property in favour of her husband by way of registered settlement deed. Thereafter she filed an application for condoning delay and for restoration on 11.01.2021, which clearly shows that the respondent had not approached the Court with clean hands.

4. The learned counsel would further submit that, the respondent / plaintiff failed to show sufficient cause for the inordinate delay. She had not specifically pleaded in her application about the steps taken by her Advocate



for searching the alleged petition. The respondent failed to explain about the long delay of 1 year and 10 months in filing the condone delay petition to file the restoration petition. Hence the order passed in I.A. No.1 of 2021 dated 20.03.2023 in O.S. No.22 of 2015, by the learned Additional Subordinate Judge, Tenkasi is liable to be set aside.

5. In support of his contention, the learned counsel appearing for the revision petitioner has relied upon the decision reported in **2018 SCC Online Mad 9159**.

7. The respondent remained absent.

8. Heard and perused the records.

9. The only referred point in this application to condone delay of 882 days in filing application to restore the suit is that, the respondent / plaintiff went to America along with her daughter and returned only on 14.09.2018. Thereafter, she underwent eye surgery and hence she could not contact her



counsel to know about the case proceedings. Thereafter, her Advocate filed an application on 28.03.2019 which was found missing. Hence, she had to file the restoration petition with a delay of 882 days.

10. On perusal of records, it is seen that the petitioner has produced her passport marked as Ex.P.1 and the ticket for going abroad as Ex.P.2 and the medical records as Ex.P.3 substantiating the eye surgery undergone by her and Ex.P.4 the extract of received register to establish the factum of filing the earlier application on 28.03.2019 which was misplaced in the Court. Therefore, the instant application to condone the delay of 882 days was filed for the bonafide reason that the petitioner was not in a position to proceed with the case in time. The explanation offered by the petitioner for the delay in filing the restoration petition is acceptable. This Court do not find any gross negligence on the part of the petitioner. Applying the principles laid down in the Catena of decisions made by the Hon'ble Apex Court and by this Court in which it has been repeatedly held that the Courts should adopt liberal and justice oriental approach and condone the delay when sufficient cause is shown. Therefore, this Court has no hesitation to confirm the order



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passed by the trial Court. However, this Court taking into consideration the hardship caused to the petitioner, this Court thinks fit that while confirming the impugned order passed by the trial Court in I.A.No.1 of 2021 in O.S.No. 22 of 2015 it would be appropriate to impose cost to the respondent. Accordingly, the respondent is directed to pay a sum of Rs.15,000/-(Rupees Fifteen Thousand only) to the petitioner within a period of two weeks from the date of receipt of the copy of this order, default the civil revision petition stands allowed automatically without any further reference to this Court. In the event of restoring the suit after compliance of the above conditional order. The trial court is directed to dispose the suit within a period of three months after giving sufficient opportunities to both parties without any unnecessary adjournments and in accordance with law.

11. With the above observations this Civil Revision Petition is disposed off. Consequently, connected miscellaneous petition is closed. No cost.

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mjs/vsn

Index: Yes/No

Speaking Order : Yes/No

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K.GOVINDARAJAN THILAKAVADI,J.

mjs/vsn

To

The Additional Subordinate Judge, Tenkasi.

ORDER MADE IN
C.R.P.(MD) No.1759 of 2023
and
C.M.P(MD)No.8789 of 2023

13.12.2023

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