



C.R.P(MD)No.2234 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED : 08.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P(MD) No.2234 of 2018
and
C.M.P. (MD) No.10064 of 2018

M. Thulasimani

...Petitioner

Vs.

V. Palanisamy

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the against the fair and decreetal order dated 12.02.2018 passed in I.A.No.81 of 2016 in O.S.No. 63 of 2013 on the file of the Additional District Judge, (Fast Track Court), Palani and allow this Civil Revision Petition.

For Petitioner : Mr. S. Poorna Chandran

For Respondent : Mr.M. Saravanan



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ORDER

This Civil Revision Petition is filed against the order dated 12.02.2018 passed in I.A.No.81 of 2016 in O.S.No. 63 of 2013 on the file of the Additional District Judge, (Fast Track Court), Palani.

2. The Revision Petitioner is the defendant and the respondent is the plaintiff in the suit in O.S.No.63 of 2013 filed for specific performance. The said suit was decreed *ex-parte* on 05.12.2014. The petitioner filed an interlocutory Application in I.A.No.81 of 2016 under Section 5 of the Limitation Act seeking to condone the delay of 434 days to file a petition to set aside the *ex-parte* decree, dated 05.12.2014. The said application was dismissed by the Trial Court holding that the petitioner has failed to prove that there was a reasonable cause for the delay of each and every day, by order, dated 12.04.2018. Aggrieved by the same, the present Civil Revision Petition is filed.



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3. The learned counsel for the petitioner submits that the petitioner is senior citizen suffering from many bodily ailments and to prove the same, she had filed eight (8) medical documents which were marked as Exs.P1 to P8. The learned counsel further submits that the learned trial Judge was earlier satisfied with the sick condition of the petitioner, appointed an Advocate Commissioner to examine the petitioner as a witness at Coimbatore in I.A.No.81 of 2016. But without considering the same reason of sickness and body ailments of the petitioner, dismissed the Interlocutory Application without any reason. The learned counsel contends that to allow the Civil Revision Petition by setting aside the order of the trial Court by considering the age and health condition of the petitioner.

4. The learned counsel appearing for the respondent submits that the trial Court considering all aspects and the oral and documentary evidence placed before it, dismissed the Interlocutory



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was passed on 05.12.2014 and as such the petitioner has failed to prove that there was reasonable cause for the delay is appears to be not reasonable.

6. Admittedly, the petitioner is a senior citizen and suffering with some ailments. Considering these facts and circumstances of the case, this Court is of the considered opinion that the delay of 434 days in filing of the petition to set aside the *ex-parte* decree has to be considered on certain conditions. This Court is of the opinion that by allowing the delay condonation petition no prejudice will be caused to the respondent and both parties would get an opportunity for fair trial in the suit proceedings.

7. For the reasons stated above, the order dated 12.02.2018 passed in I.A.No.81 of 2016 in O.S.No.63 of 2013 on the file of the Additional District Judge (Fast Track Court) Palani, is hereby set aside.



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8. Accordingly, this Civil Revision Petition is allowed on condition of payment of cost of Rs.2,000/- (Rupees Two Thousand only) payable by the petitioner to the respondent within a period of two weeks from the date of receipt of a copy of this order and file a memo of payment of cost in the Court below within one week thereafter.

9. No costs.

10. Consequently, connected Civil Miscellaneous Petition is closed.

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

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To

The Additional District Judge,
Fast Track Court,
Palani.



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BATTU DEVANAND, J.

RM

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