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C.R.P.No.2665 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-12-2024

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

C.R.P.No. 2665 of 2021

S.Shajahan (deceased)

1.S.Neelofar,
W/o.Shahjahan,
No.17/a, Ganapathy Layout,
K.K.Pudur, Coimbatore-641 038.

2.I.Shaira Banu,
D/o.Shahjahan,
No.17/a, Ganapathy Layout,
K.K.Pudur, Coimbatore-641 038.

3.A.Husaina Banu,
D/o. Shahjahan,
No.17/a, Ganapathy Layout,
K.K.Pudur, Coimbatore-641 038.

4.S.Hasan Basha,
S/o. Shahjahan,
No.17/a, Ganapathy Layout,
K.K.Pudur, Coimbatore-641 038.

5.S.Shahin,
D/o.Shahjahan,
No.17/a, Ganapathy Layout,
K.K.Pudur, Coimbatore-641 038.

.... Petitioner (s)

-Versus-

1.G.Sumathy
W/o.A.C.Palaniswamy,
D.No.7, Behind Bus Stand,
Annur, Mettupalayam Road,
Annur, Coimbatore.



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2.A.C.Palaniswamy,
S/o. A.K.Chinnaswamy Gounder,
D.NO.7, Behind Bus Stand,
Annur - Mettupalayam Road,
Annur, Coimbatore.

..... Respondent (s)

Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the order of the Learned Principal Subordinate Judge, Coimbatore dated 10.09.2018 in I.A.No.443 of 2015 in O.S.No.343 of 2012.

For Petitioner(s): M/s.R.K.Sekina Reshma

For Respondent(s): No Appearance for RR1 & 2

ORDER

This civil revision petition has been filed challenging the impugned order dated 10.09.2018 passed by the learned Principal Subordinate Judge, Coimbatore, dismissing the application in I.A.No.433 of 2015 in O.S.No.343 of 2012 filed by the plaintiff under Section 5 of the Limitation Act, 1963, seeking to condone the delay of 1260 days in filing the application under Order IX, Rule 9 of CPC seeking to restore the suit which was dismissed on 28.06.2011 for the default of the sole plaintiff (since deceased).

2. The respondents are the defendants in the suit.

3. The suit in O.S.No.343 of 2012 was originally filed by S.Shajahan, the father of the revision petitioners praying for a judgment and decree for (i)



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declaration declaring that the sale deed dated 22.01.1999 executed in favour of the 1st defendant registered on the file of the Sub Registrar, Annur, as Doc.No.51 of 1999 as fictitious, fraudulent, fraud, void and unenforceable under law as the Power of Attorney dated 17.03.1995 in favour of the 2nd defendant is not intended for the sale of the suit property and has no legal enforceability; (ii) permanent injunction restraining the defendants from in any manner executing sale, encumber, or commit any acts that will cause material impairment to the value of the building or lead to multiplicity of proceedings in any manner whatsoever; and (iii) mandatory injunction directing the defendants to put the plaintiff in possession of the suit property.

4. It was alleged in the plaint that in a loan transaction, a power of attorney was executed, and misusing such power of attorney, a sale deed was executed. During the pendency of the suit, the sole plaintiff died on 11.01.2007. The revision petitioners being the wife and children of the sole plaintiff-S. Shajahan, were to be brought as plaintiffs 2 to 6 in the suit. But the 1st revision petitioner could not do so as he was suffering from heart ailment. As she had been taking treatment for more than three years at KG Hospital, Coimbatore, from January, 2011 onwards she could not take steps to implead herself and her children in the suit as plaintiffs. Only on 13.12.2014, when she



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had contacted her husband's counsel, did she come to know about the fact that the suit was dismissed on 28.06.2011 for non-appearance. Thereafter, an application for restoration of the suit, along with an application seeking to condone the delay in filing the application for the restoration of the suit, came to be filed.

5. The reasons assigned in the affidavit filed in support of the delay condonation application were that from 2011 onwards, the 2nd plaintiff, who is the wife of the deceased sole plaintiff, was suffering from an ailment and was taking treatment at K.G. Hospital in Coimbatore. She examined herself as P.W.1 before the court below and marked Ex.P.1 medical certificate issued by the K.G. Hospital, Coimbatore, in support of her claim. The defendants were set ex parte in the delay condonation application. The court below, however, having found that no particulars as to the hospitalisation and nature of treatment were given, refused to condone the delay and dismissed the delay condonation application.

6. Despite receiving notice and having their names posted on the cause list, the respondents did not present in person or through counsel. It should be noted that the respondents in this case remained ex parte even before the lower court in the delay condonation application.



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7. This court has heard the learned counsel for the revision petitioners/plaintiffs and perused the available materials carefully.

8. Insofar as condonation of delay is concerned, it is true that the length of delay does not matter and what matters is, the existence of sufficient cause.

9. The court must adopt a liberal approach in the matter of condonation of delay and if adequate cause is shown, regardless of the duration of the delay, the court must condone the delay. The supreme court has been consistently holding that the court should be liberal in construing the sufficient cause and should lean in favour of such party.

10. In the instant case, the revision petitioners asserted that the 1st revision petitioner had been taking treatment at KG Hospital, Coimbatore for her heart ailment for about three years from January, 2011. The suit was said to be dismissed for default of the sole plaintiff on 28.06.2011. The revision petitioner had produced medical certificate issued by the KG Hospital, Coimbatore, to substantiate the delay that had occurred in bringing themselves as party plaintiffs on the death of the sole plaintiff. Of course, mere filing of medical certificate would not amount to proof. However, the court below ought to have granted an opportunity to the revision petitioners to at least examine any one of the responsible persons from KG Hospital, Coimbatore so that the



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revision petitioners could have brought on record some more concrete evidence in support of the delay. That has not been done so in this matter. Therefore, merely because minute details have not been mentioned in the medical certificate, it cannot be said that the revision petitioners claim is totally untrue. The court below instead of dismissing the delay condonation application, ought to have adopted liberal approach, as they were not actually the plaintiffs and it was their family head who had been conducting the case all along and on his death, the revision petitioners wanted to bring themselves on record in the place of the deceased sole plaintiff and prosecute the suit proceedings for declaration and injunction.

11. Considering the facts and circumstances of the case, more particularly, the fact that the revision petitioners were not the parties in the suit and it was only their family head who was prosecuting the suit all along and the 1st revision petitioner was taking treatment for heart ailment, this court is inclined to adopt a liberal approach and afford an opportunity to legal heirs of the deceased sole plaintiff who are the revision petitioners herein to establish their claim. Accordingly, the order impugned in the revision petition is set aside and the application in I.A.No.443 of 2015 is set aside and the delay of 1260 of delay in filing the restoration application seeking to restore the suit



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which was dismissed for default on 28.06.2011 is condoned and the court below shall take up the application filed under Order IX, Rule 9 of CPC and dispose of the same on merits and in accordance with law and thereafter, depending upon the outcome of the order in the restoration application, the court below shall restore the suit and proceed with further in the suit as per the law after due notice to the defendants in the suit.

In the result, the civil revision petition is allowed accordingly with the above directions. No costs.

Index : yes / no
Neutral Citation : yes / no
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17-12-2024

To

1.The Principal Subordinate Judge, Coimbatore, Coimbatore District.



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N.SATHISH KUMAR.J.,

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