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C.R.P.No.4178 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.4178 of 2024

S.Suseela

... Petitioner

Vs

M.Venkatachalam

... Respondent

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, pleaded to set aside the fair and decretal order dated 05.07.2023 made in I.A.No.1 of 2020 in O.S.No.5 of 2019 on the file of the learned Subordinate Judge, Rasipuram.

For Petitioner : Mr.R.Prabakar

For Respondent : Ms.D.Chitra Maragatham
for M/s.T.R.Rajaraman

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Subordinate Judge, Rasipuram, in I.A.No.1 of 2020 in O.S.No.5 of 2019 on 05.07.2023.



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2. The brief facts of the case is that the petitioner is the plaintiff and the respondent is the defendant in O.S.No.5 of 2019 on the file of the Subordinate Court, Rasipuram. The suit in O.S.No.5 of 2019, which was filed by the petitioner/plaintiff for the relief of partition, came to be dismissed for default on 07.03.2020, when it was listed in the special list. Thereafter, the petitioner had filed an application in I.A.No.2 of 2020 under Order IX Rule 9 of CPC to restore the suit dismissed on 07.03.2020 along with the application in I.A.No.1 of 2020 under Section 5 of the Limitation Act to condone the delay of 92 days in filing the restore application. The petitioner/plaintiff had contended that since she was suffering from stomach pain, she was unable to appear before the trial Court on 07.03.2020. The trial Court, finding that no sufficient cause had been shown by the petitioner to condone the delay, had dismissed the applications vide common order dated 05.07.2023. Aggrieved over the same, the present revision petition has been filed by the petitioner.

3. Learned counsel for the petitioner submitted that the petitioner/plaintiff had filed a suit in O.S.No.5 of 2019 before the Subordinate Court, Rasipuram,



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seeking for partition. He further submitted that since the petitioner suffered from stomach pain, she was unable to appear before the trial Court on 07.03.2020 and thereafter, since she was taking treatment, she was unable to file the restore application within time. He also submitted that the petitioner and the respondent being siblings, by condoning the delay and restoring the petition, no prejudice would be caused to the respondent. Further, the petitioner also undertakes to compensate the respondent for the inconvenience caused and the petitioner is also ready to cooperate for the speedy disposal of the trial. Hence, he prayed to set aside the order passed on 05.07.2023 in I.A.No.1 of 2020.

4. Learned counsel for the respondent submitted that the suit was filed in the year 2019 and when the same was listed in the special list, the petitioner/plaintiff did not appear before the trial Court. He further submitted that though the petitioner claims that she was suffering from stomach pain and subsequently, taking treatment for the same, she has not filed any document to establish the same and the trial Court had rightly dismissed the application. Hence, he objected for setting aside the common order passed by the trial Court.



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5. Heard both sides and perused the materials available on record.

6. It is seen that the petitioner and the respondent are siblings and the suit was filed for partition. Though this Court finds that the petitioner has not shown any sufficient cause, taking into consideration the fact that the parties are siblings and the suit is for partition and the delay is only 92 days, this Court is of the opinion that one opportunity may be given to the petitioner in the interest of justice to put forth her case, on imposition of terms and cost.

7. In view of the above, this Civil Revision Petition stands allowed and the common order dated 05.07.2023 in I.A.No.1 of 2020 in O.S.No.5 of 2019 on the file of the Subordinate Court, Rasipuram, is hereby set aside and the suit is restored, on condition that the petitioner deposits a sum of **Rs.5,000/-** before the trial Court as costs within a period of **two weeks** from the date of receipt of a copy of this order. On such deposit being made by the petitioner, the amount shall be disbursed to the respondent on his appearance.



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8. The parties are directed to appear before the trial Court on 20.11.2024

and the trial Court shall take every endeavor to dispose of the suit in O.S.No.5 of 2019 as expeditiously as possible, preferably, within a period of **six months** from 20.11.2024. No costs.

29.10.2024

Note : Registry is directed to return the original papers to the counsel for the petitioner forthwith.

Index : Yes / No

Neutral Citation : Yes / No

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To

The Subordinate Court, Rasipuram.



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