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CRP.No.1543 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.1543 of 2024

R.Meenakumari

.. Petitioner

Vs.

David Vijayaraj

.. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order in I.A.No.1 of 2021 in O.S.No.18 of 2013 by the learned Additional Subordinate Judge Court at Chengalpattu dated 29.11.2023 by allowing the above Civil Revision Petition.

For Petitioner	:	Mr.R.Gandhi
For Respondent	:	Mr.G.Balasubramanian

ORDER

This petition has been filed as against the order dated 29.11.2023 made in I.A.No.1 of 2021 in O.S.No.18 of 2013 on the file of learned Additional Subordinate Judge, Chengalpattu.

2. The petitioner is the plaintiff in O.S.No.18 of 2013 filed for recovery of mortgage due on the file of learned Additional Subordinate



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Judge, Chengalpattu. The suit was posted for trial on 11.11.2014 and since, the petitioner did not appear before the Court, the suit was dismissed for default on 11.11.2014. The petitioner immediately filed the restoration petition under Order IX Rule 9 of CPC on 19.11.2014 in S.R.No.6045/2014 and the petition was returned for certain compliances on 30.04.2015 with a direction to represented within one month. However, the petition was re-presented on 21.09.2015 with a delay of 84 days with condone delay petition. Thereafter, the petition was misplaced and later it was re-presented on 21.02.2020 and there has been a delay of 2430 days in representing the papers. The petition filed by petitioner to condone the delay of 2430 days in filing the petition to set aside the ex-parte decree dated 11.11.2014 was dismissed on 29.11.2023 vide the impugned order. Challenging the dismissal order, the present revision petition has been filed.

3. The learned counsel for the petitioner would submit that the petitioner/plaintiff has filed a suit for recovery of money based on the mortgage deed and when the suit was posted for trial on 11.11.2014, the petitioner was unable to appear before the Court and thereafter, the



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restoration application was filed on 19.11.2014, however, the application was returned for certain compliances on 30.04.2014. Since, the petitioner was suffering from viral fever, the application was filed with a delay of 84 days on 21.09.2015 and thereafter, the petitioner was misplaced and the petitioner went to her native Rajasthan. She was unable to contact her earlier counsel who was pursuing the case also passed away on 25.10.2017, thereafter, the petitioner engaged another counsel and represented the application on 21.02.2020 with a delay of 2430 days. The Trial Court finding that no sufficient cause has been shown by the petitioner to condone the delay vide the impugned order dated 29.11.2023 dismissed the petition. Hence, seeks to set aside the dismissal order and allow the revision petition.

4. Per contra, the learned counsel for the respondent submitted that when the suit was listed for trial on 11.11.2014, the petitioner did not appear and the suit came to be dismissed on 11.11.2014 and the petitioner had re-presented the application to set aside the ex-parte decree dated 11.11.2014 with a delay of 2430 days. The Trial Court rightly finding that the petitioner has not shown justifiable cause to condone the huge delay



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has dismissed the application. Hence, opposed the revision petition.

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

6. The petitioner has filed a suit in O.S.No.18 of 2013 for recovery of money based on the mortgage deed on the file of learned Additional Subordinate Judge, Chengalpattu. Since, the petitioner did not appear on the date of trial on 11.11.2014, the Trial Court dismissed the suit for default on 11.11.2014. The petitioner had filed a restoration application in S.R.No.6045/2014 on 19.11.2014, however, the application was returned for certain compliances on 30.04.2015 and thereby, the application was re-presented on several occasions and finally, the application was filed on 21.02.2020 with a petition to condone the delay of 2430 days in filing the petition to set aside the ex-parte decree dated 11.11.2014. The Trial Court finding that no sufficient cause has been shown to condone the delay of 2430 days had dismissed the application vide the order dated 29.11.2023.

7. No doubt, the Hon'ble Supreme Court as well as this Court have repeatedly held that the length of delay is immaterial, however, the



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applicant, who seeks condonation of delay, has to show sufficient or just cause. Such proof of sufficient or just cause is a pre-condition for entertaining the application for condonation of delay. The discretion to allow an application for condonation of delay is different from the satisfaction of the requirements of Section 5 of the Limitation Act. The discretion cannot be exercised by a Court when the applicant seeking condonation of delay is unable to satisfy the Court that he had just or sufficient cause for not approaching the Court earlier and that the delay was occasioned beyond his control, there was no gross negligence or deliberate inaction or any lack of bonafides. If the petitioner is able to show and satisfy the Court, in the absence of the above militating factors, then he is entitled to discretion being exercised in his favour. However, in this case, on perusal of the affidavits and records, this Court is of the view that the petitioner has not shown sufficient cause to condone the huge delay of 2430 days. That apart, condoning the long delay in the absence of sufficient reason would cause prejudice to the other parties and thus, this petition is devoid of merits.



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8. Such view of the matter, this Court do not find any infirmity in the order dated 29.11.2023 passed by the learned Additional Subordinate Judge, Chengalpattu in I.A.No.1/2021 in unnumbered O.S.No.18 of 2013 and this civil revision petition stands dismissed as devoid of merits. No costs.

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Index : Yes/No

Internet : Yes/No



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To,

The Additional Subordinate Judge,
Chengalpattu



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A.D.JAGADISH CHANDIRA, J.,

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