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CMP.No.8193 of 2024
in
A.S.SR.No.42209 of 2024

SATHI KUMAR SUKUMARA KURUP,J.

The learned Counsel for the Respondent vehemently objects to the affidavit of the Petitioner. The Plaintiff had instituted the Suit seeking declaration to declare the release deed as null and void after thirty years. The Defendant in the Suit is none other than the sister-in-law of the Plaintiff who is a widow, had filed a Petition under Order VII Rule 11 (a) and (d) and Section 151 of CPC seeking rejection of Plaint. After due enquiry, the Petition was allowed. Against which, this Appeal had been filed.

2. It is the contention of the learned Counsel for the Respondent that the Petition lacks merit as the Appellant/Plaintiff has not stated clearly the reasons for the delay and it is vague. Stating that her husband was admitted in Hospital due to fistula surgery, she is unable to file an Appeal in time. In the counter, the Respondent states that the Petition was not accompanied by the medical certificate regarding the claim made by the Appellant/Petitioner.



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3. Today (14.11.2024), during enquiry, the learned Counsel for the Appellant had furnished the copy of the medical certificate regarding the treatment undergone by the husband of the Petitioner.

4. On perusal of the copies of the medical certificate furnished by the learned Counsel for the Petitioner, the learned Counsel for the Respondent submitted that the husband of the Petitioner suffered medical ailment and undergone treatment and subsequently discharged. All these occurred prior to the passing of Order in the Petition filed by the Respondent in the Appeal who is the Defendant in I.A.No.1205 of 2018 in O.S.No.191 of 2018. Therefore, it is the submission of the learned Counsel for the Respondent that the Petitioner's affidavit has no merit and it is vague. As per the medical records, her husband was under the treatment for medical ailment in brain prior to 25.08.2023. What prevented her from filing Appeal within time is not explained properly. The medical certificate furnished by the learned Counsel for the Petitioner does not support the claim of the Petitioner/Appellant seeking to condone the delay of 89 days in not filing the Appeal within time. Therefore, the learned Counsel for



the Respondent submitted that the Petition has no merit and has to be dismissed in the light of the reported ruling of the Hon'ble Supreme Court regarding exercising discretion regarding delay in filing Appeal or any proceedings. The party affected has to explain clearly each date of delay. Here, it is not the case. It is vague. Therefore, this Petition has to be dismissed. It is the further submission of the learned Counsel for the Respondent that the Suit filed by the Plaintiff itself is not maintainable. The widow/sister-in-law had filed the Suit after thirty years, only to settle scores based on ego in the family and for seeking money. Therefore, it shall not be continued in Appeal.

5. Considering the grievance of the affected party before the trial Court, she filed Appeal under the right of Appeal guaranteed to the affected litigant. The objection of the learned Counsel for the Respondent even though found justified is rejected considering the suffering of a woman after her husband having been undergone surgery and discharged from the Hospital has to be considered in the light of emotional stress undergone by the wife. Anyway the affidavit is vague particularly, as per the ruling of the Hon'ble Supreme Court, instead of dismissing the Petition straight away, the delay is condoned by



imposing costs of Rs.2000/- on the Petitioner. The Petitioner is directed to pay Rs.2000/- to the Respondent within a period of ten days from today.

SATHI KUMAR SUKUMARA KURUP.J.,

This Petition is allowed accordingly.

14.11.2024

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Note: Registry is directed to number the Appeal, if it is otherwise in order.

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