



CRP.No.1671 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

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Saratha

... Petitioner

Vs.

1.Kirubanithi

2.Girija

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of the learned Principal District Munsif, Tiruvannamalai, passed in IA.No.180 of 2018 in OS.No.171 of 2012 dated 20.07.2021.

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondents : Ms.E.V.Thulasi

ORDER



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This Civil Revision Petition has been filed challenging the order passed in IA.No.180 of 2018 in OS.No.171 of 2012 on the file of the Principal District Munsif, Tiruvannamalai, wherein the petitioner herein has filed a petition under Section 5 of the Limitation Act, to condone the delay of 444 days in filing petition to restore the suit. The said petition was dismissed by the trial Court. Aggrieved by the said order, the present petition is filed.

2. The petitioner is the plaintiff in a suit and he filed the suit for the relief of bare injunction as against the respondent. The suit was posted on 01.11.2016 and due to her absence, the suit was dismissed for default. In the meantime, she was affected with illness and she was bed ridden. She was taking treatment in a Hospital and unable to attend the Court. Thereafter, she contacted her counsel and came to know that the case was dismissed for default on 01.11.2016, and thus there is a delay of 444 days in filing a petition to restore the order dated 01.11.2016.



3. According to the respondents, the petition is not maintainable.

Originally, the case was posted for cross examination and thereafter, the suit was dismissed for default on 01.11.2016, due to the non-appearance of the petitioner. The petitioner has no merit in this case, hence she left the suit for dismissal. The petitioner has not produced any documents to prove her illness and treatment taken in the Hospital. The petitioner has also not given proper reason for the delay of 444 days and therefore, this petition is liable to be dismissed.

4. Before the trial Court, on the side of the petitioner, she was examined as PW1 and no documents were marked and on the side of the respondent no oral or documentary evidence adduced. After hearing both sides, the trial Court dismissed the petition.

5. The learned counsel for the petitioner would contend that the petitioner has filed the suit for the relief of permanent injunction as against the respondents herein. The said suit was dismissed on 01.11.2016 for non-appearance of the petitioner. Since she was bedridden due to her illness, she



was unable to appear before the Court. Hence, the suit was dismissed for default on 01.11.2016. Thereafter, she filed a petition to restore the suit with condone delay application for 444 days delay in filing restoration petition. Before the trial Court, the petitioner was examined as PW1 and she categorically explained the reasons for the delay. There is no contra evidence adduced to rebut the evidence PW1. But the trial Court failed to consider the said fact and dismissed the petition, hence the order of the trial Court is liable to be set aside.

6. In support of his contention, the learned counsel for the petitioner has relied upon the judgment of ***Pandit Tukaram Dharrao (since deceased) by his L.Rs. And others, Vs. Shankar Raoji Dharrao (since deceased) by his L.Rs and others***, reported in **2009 (6) Mh.L.J.**

7. The learned counsel for the respondents would contend that the petitioner had the filed suit for permanent injunction. The suit was dismissed for default on 01.11.2016 for non appearance of the petitioner. The petitioner has filed a petition to restore the suit, which was dismissed on



01.11.2016, after 444 days with the condone delay petition. The petitioner has not stated any valid reason in the affidavit but simply stated that she was bedridden, she was ill and hence she could not appear before the Court. It is stated that she was taking treatment in the hospital, but in order to substantiate her contention no valid documents were filed. The trial Court after taking into consideration all those facts and circumstances of the case, dismissed the petition. Therefore, the order passed by the trial Court is to be confirmed and the Civil Revision Petition is to be dismissed.

8. This Court heard both sides and perused the records.

9. In this case, the petitioner has filed the suit for the relief of permanent injunction. The suit was posted on 01.11.2016 and due to the non appearance of the petitioner, the suit was dismissed for default. Thereafter, the petitioner filed a petition to restore the suit, which was dismissed for default on 01.11.2016, with the condone delay petition for 444 days. According to the petitioner, due to her illness and old age, she was bed ridden and she was taking treatment in the hospital and hence, she was



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unable to appear before the Court on the date of hearing. However, the petitioner has not produced any documents to prove that she was taking treatment and there is no reference either in the affidavit or in the evidence adduced by her to that regard. Further, the huge delay of 444 days has not been properly explained. The suit is only for bare injunction based on the earlier cause of action. Therefore, there is no prejudice caused to the petitioner by dismissing the petition. Since the petitioner has not properly explained delay of 444 days, the trial Court has dismissed the petition.

10. Therefore, the trial Court has passed a reasoned order and also that there is no document to show that the petitioner was bed ridden for the past two years and she also admitted that she was only inpatient for 3 days. Therefore, the order passed by the trial Court in dismissing the petition is in order. The petitioner has not produced any documents to prove her contentions. As far as the judgment cited by the petitioner is concerned it will not be applicable to the present facts of the case, because in this case huge delay of 444 days has not been properly explained. Therefore, the submission of the learned counsel for the petitioner is not acceptable.



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11. In view of the above, this Court is of the opinion, this Civil Revision Petition has no merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs.

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Index : Yes / No
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To

The Principal District Munsif, Tiruvannamalai.



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P.DHANABAL., J.
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