



C.R.P.No.4250 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.4250 of 2024

R.Vedavalli

... Petitioner

Vs

1. N.Srinivasan (Minor)
Represented by his father and
natural guardian D.Nagarajan
2. Susila
3. D.Pazhani
4. D.Mohana
5. D.Sasikala
6. Ambika
7. Sagunthal

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, pleaded to set aside the order dated 29.07.2024 in I.A.SR.No.12079 of 2023 in I.A.No.1 of 2021 in A.S.No.01 of 2012 passed by the learned Principal District Judge, Chengalpet.



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For Petitioner : Mr.M.V.Seshachari
For R1/Caveator : Mr.R.Abdul Mubeen
for Mr.M.Sankar

ORDER

The Civil Revision Petition has been filed against the order dated 29.07.2024 passed by the learned Principal District Judge, Chengalpet, in I.A.SR.No.12079 of 2023 in I.A.No.1 of 2021 in A.S.No.1 of 2012.

2. The brief facts of the case are as under :-

2.1. The petitioner is the 5th defendant in the suit filed by the first respondent/plaintiff in O.S.No.15 of 2006 before the Principal Subordinate Court, Chengalpet, seeking for a relief of declaration. After full fledged trial, the suit came to be decreed on 03.11.2011.

2.2. Aggrieved over the same, the petitioner/5th defendant has preferred an appeal in A.S.No.1 of 2012 against the first respondent/plaintiff and others, before the Principal District and Sessions Court, Chengalpet, Tiruvannamalai and the same was dismissed for default on 03.06.2019.

2.3. Therefore, the petitioner/appellant had filed an application in



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I.A.No.1 of 2021 under Section 5 of the Limitation Act, seeking to condone the delay of 170 days in filing the petition to restore the appeal. The learned Principal District Judge, by an order dated 01.04.2022, had allowed the application on condition that the petitioner shall pay a sum of Rs.1000/- as cost to the 1st respondent/plaintiff on or before 18.04.2022 and failing which, the Court had stated that the petition shall automatically be dismissed. The petitioner had not deposited the amount within the time fixed by the first appellate Court and the application came to be dismissed for default on 27.04.2022.

2.4. Thereafter, the petitioner has filed an application in I.A.SR.No.12079 of 2023 seeking to condone the delay of 440 days in filing the petition seeking extension of time for payment of cost imposed in I.A.No.1 of 2021.

2.5. The Court below, finding that the petitioner had been lethargic right from the beginning and also finding that the petition was filed only for protracting the proceedings, has rejected the application on 29.07.2024. Challenging the same, the present Civil Revision Petition has been filed.



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3. Learned counsel for the petitioner submitted that earlier the petitioner was suffering from acute jaundice and was taking native treatment for the same and thereafter, she was suffering with heart ailments and was bedridden, thereby, she was unable to pay the cost as directed by the learned Principal District Judge, Kancheepuram District at Chengalpattu in I.A.No.1 of 2021 on 01.04.2022, within time and there was a delay of 440 days in filing the petition under Section 148 of CPC. He further submitted that the petitioner is ready to abide by any condition that may be imposed by this Court. Hence, he prayed that the revision may be allowed on fixation of terms and conditions.

4. Learned counsel for the caveator/1st respondent submitted that the suit is of the year 2006 and it was decreed on 03.11.2011 and the appeal itself was filed with delay in the year 2012. He further submitted that pending the appeal, the petitioner had filed an application under Order 41 Rule 5(A) of CPC to stay the operation of the decree dated 03.11.2011, in which, he had not taken any steps for sending fresh notice to respondents 4 to 6 for years together and thereby, the petition was dismissed on 23.09.2015. He also submitted that the petitioner had been protracting the proceedings for about 3 ½ years and subsequently, the respondent/plaintiff had also filed an application in I.A.Nos.461 & 462 of 2018 for



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reception of additional documents in appeal and in which, the petitioner did not file a counter and remained ex parte. Meanwhile, the appeal was dismissed for default on 03.06.2019. Subsequently, the petitioner came up with the petition seeking to condone the delay of 170 days in filing the petition to restore the appeal and the Court below had allowed the petition with a condition to pay a cost of Rs.1000/- on or before 18.04.2022, however, the petitioner has failed to pay the amount and the same was dismissed for default on 27.04.2022. Thereafter, the petitioner has filed an application with a delay of 440 days to extend the time to comply with the condition and the first appellate Court had rightly dismissed the same. Hence, he objected for allowing the revision petition.

5. Heard the learned counsel appearing for both sides and the perused the materials available on record.

6. On perusal of record, it is seen that the appeal filed by the petitioner/5th defendant against the decree passed in favour of the 1st respondent/plaintiff on 03.11.2011, was dismissed for default on 03.06.2019. Further, since the petitioner failed to comply with the condition imposed by the first appellate Court while allowing the petition seeking condone the delay in filing the restoration



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application, the application came to be dismissed for default. Later, after a delay of 440 days, the petitioner came up with an application seeking to extend the time for payment of cost in I.A.No.1 of 2021. The reasons stated by the petitioner is that since she was taking native treatment for jaundice and also for the heart ailments, there was a delay in pursuing the matter.

7. The first appellate Court, holding that the court become *functus officio* on dismissal of the petition in I.A.No.1 of 2021 on 27.04.2022 and also finding that the petitioner had not shown any sufficient cause to condone the delay, had rejected the application. Though the petitioner claims that she was suffering from Jaundice and heart ailments, no proof has been produced even before this Court to prove her ill health during the relevant period, which has prevented her from payment of cost. Therefore, from the conduct of the petitioner, this Court is of the opinion that at every stage, an attempt had been made by the petitioner to protract the proceedings and thereby, the first Appellate Court, had rightly finding that the petitioner had not shown sufficient cause to condone the delay, had dismissed the application.



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8. In view of the above, this Court also finds that the petitioner has not shown sufficient cause for condoning the delay and this Court is of the opinion that there is no illegality or infirmity in the order passed by the first Appellate Court. Accordingly, the Civil Revision Petition stands dismissed. No costs.

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Index : Yes / No
Neutral Citation : Yes / No
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To

The Principal District Court,
Kancheepuram District at Chengalpet.



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A.D.JAGADISH CHANDIRA, J.

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