



C.R.P.No.4247 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

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THE HONOURABLE THIRU JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P.No.4247 of 2023

Paranthaman

.... Petitioner

vs

Pachaiammal

..... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of dismissal in I.A.No.78 of 2021 in O.S.No.338 of 2013 on the file of District Munsif Court, Villupuram, Villupuram District vide order dated 24.11.2022.

For Petitioner : Mr.S.Raja Ravi Varma

For Respondents : Notice served

ORDER

The Civil Revision Petition has been filed against the order passed in I.A.No.78 of 2021 in O.S.No.338 of 2013 dated 24.11.2022 by the learned



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Principal District Munsif, Villupuram, dismissing the application filed under Section 5 of Limitation Act to condone the delay of 342 days in filing the petition under Order IX Rule 9 of Civil Procedure Code to restore the suit which was dismissed for default on 10.02.2020.

2. The petitioner, who is the plaintiff in O.S.No.338 of 2013, has filed the suit for the relief of permanent injunction against the defendant. The suit was posted for petitioner/plaintiff's appearance on 10.02.2020. The petitioner/plaintiff did not appear on that date and hence the trial Court dismissed the suit for non-appearance of the petitioner/plaintiff on 10.02.2020.

3. The petitioner filed an application in I.A.No.78 of 2021 to condone the delay of 342 days in filing the petition to restore the suit. The reason stated in that petition was that the petitioner/plaintiff was suffering from jaundice.

4. The trial Court, finding that earlier the suit was posted for framing issues on 18.09.2014 and thereafter, a check-slip was issued for payment of



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deficit court fee and the suit was posted for amendment of plaint on 10.06.2016 and on account of non-taking of steps to amend the plaint, the suit was dismissed for default on 19.01.2017.

5. The petitioner had earlier filed an application in I.A.No.1184 of 2018 under Order IX Rule 9 of the Code of Civil Procedure, seeking to condone the delay. In that petition, the petitioner has stated that he was suffering from jaundice. The trial Court allowed the petition on 13.08.2019 and restored the suit. Thereafter, the suit was posted for taking steps to amend the plaint and it was pending from 30.08.2019. Despite having given several opportunities till 10.02.2020, no steps were taken and it was once again dismissed for default. The petitioner has once again filed a petition seeking to restore the suit, taking the same reason once again, i.e., suffering from jaundice. The suit was dismissed only after adjourning the same for more than a year and also finding that the delay has not been properly explained. Challenging the said order, the present Civil Revision Petition has been filed.



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6. Learned counsel for the petitioner submits that since the petitioner was suffering from jaundice, he was unable to take steps and therefore, the suit was dismissed for default. Learned counsel further submits that the delay is neither wilful or wanton.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. A perusal of records would show that the suit was earlier dismissed on 19.01.2017. The petitioner had filed I.A.No.1184 of 2018 to restore the suit on file. The reason mentioned in the said application was that he was suffering from jaundice. The trial court accepting the reason, restored the suit on file on 13.08.2019. Thereafter, the suit was posted for amendment of plaint. However, despite giving several opportunities on various dates i.e., on 30.08.2019, 16.09.2019, 03.10.2019, 22.10.2019, 25.10.2019, 01.11.2019, 06.11.2019, 14.11.2019, 26.11.2019, 06.12.2019, 17.12.2019 10.01.2020, 22.01.2020, 05.02.2020 and 10.02.2020, the petitioner/plaintiff has not taken any steps to



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amend the plaint. It could be seen that the trial Judge has granted nearly one year time for amending the plaint. Having failed to make use of the time granted by the trial Court and having allowed the suit to be dismissed for default, for the second time, the present revision has been filed by the petitioner taking the very same reason that he was suffering from jaundice and therefore, he could not take steps for amending the plaint.

9. This Court is not convinced with the reasons stated by the petitioner. Therefore, I do not find any error or irregularity in the order passed by the trial Court in I.A.No.78 of 2021 in O.S.No.338 of 2013. The Civil Revision Petition is liable to be dismissed.

10. Accordingly, the Civil Revision Petition is dismissed. No costs.

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A.D.JAGADISH CHANDIRA,J.,

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To

The Principal District Munsif Court, Villupuram, Villupuram District

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