



C.R.P.No.1170 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.1170 of 2023

Nehrudasan

... Petitioner

-Vs-

Vedhavalli (Died)

1.Veeramani
2.Kalaiselvi
3.Nyanavalli
4.Premavathi

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decreetal order of the Additional District Munsif Court, Ariyalur dated 30.08.2022 in I.A.No.181 of 2018 in O.S.No.222 of 2012

For Petitioner : Mr.T.Dheeraj
for M/s.P.V.Law Associates

For Respondents : Mr.G.Periyaperumal

ORDER

This Civil Revision Petition is filed by the plaintiff who had presented a suit for declaration of title and for permanent injunction. Pending the suit, the sole defendant Vedhavalli passed away. In order to bring on record the legal representatives of Vedhavalli, application was filed in I.A.No.90 of 2016. The said application was dismissed for default on 11.07.2016. To restore the said



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application, there occasioned a delay of nearly 703 days. Therefore, to condone the delay, I.A.No.181 of 2018 was presented. The reason given in the affidavit is that the petitioner was suffering from Jaundice from 11.07.2016 till 14.06.2018.

2. On receipt of the petition, a detailed counter was presented by the defendant stating that the delay due to jaundice is unbelievable. It is not a mere 50 or 100 days delay but nearly 703 days. The reasons given in the affidavit was dismissed by the defendant as a "cock and bull story". The defendant relied upon a judgment of this Court in **A.P.Ramasamy -vs- Dhanalakshmi (2004) 1 LW 406** to plead that since there is no diligence on the part of the petitioner, no indulgence by condonation of delay must be granted to him. The learned Judge, on the basis of the submissions of either parties, following the aforesaid judgment, came to a conclusion that the application deserves an order of dismissal and accordingly dismissed it, against which the present civil revision petition has been filed.

3. Heard Mr.Dheeraj for the petitioner and Mr.G.Periyaperumal for the respondents.

4. I have carefully considered the submissions made by the learned counsel on either side.



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5. Vital rights relating to immovable properties are sought to be adjudicated in the suit. Due to the unfortunate circumstance of the death of the defendant, the plaintiff was constrained to move an application to bring on record the legal representatives. The application was numbered without any delay. However, it was dismissed for default for the reason that notice had not been served on the respondents. A party engages a counsel and hopes that his/her case will be prosecuted diligently. I am able to visualise that it is not a party who is going to serve notice on the respondent, but he relies upon the counsel and his office who have to perform that duty. For the mistake of the counsel, a party cannot be penalised. If authority is required for the proposition, it is in **Rafiq and another -vs- Munishlal and Another (AIR 1981 SC 1400)**. Nonetheless, I have to take into consideration the fact that a period of 8 years has gone by from the date of death of the sole defendant, in all 12 years have gone by from the date of the suit and the property is still under litigation.

6. Learned counsel for the respondents would state that, taking advantage of the identity in the name of the predecessor-in-title of the defendant, the plaintiff has been emboldened to file the present suit. I would state that unless and until a finality is attained to the said confusion created on account of the similarity in the names, the defendant also cannot rest in peace as the plaintiff will make all kinds of attempts in order to fight for his alleged rights. Interest of justice requires that both sides receive a judgment on merits dealing with the finality of the case.



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7. In the light of the above discussion, I am inclined to condone the delay of 703 days in filing the application to restore the application filed to bring on record the legal representatives of the deceased sole defendant. I am aware that the defendant has exhibited lackadaisical attitude in not giving a notice to the respondents. In fact, since the application had been filed in time, had notice been issued, the same would have been ordered. It is not on account of the fault of the plaintiff that the matter is still pending at the stage of peripheries for the last 8 years. For this purpose, I do not want to throw out the case of the plaintiff.

8. Therefore, I am inclined to condone the delay but with a condition that the plaintiff pays the defendant a sum of Rs.20,000/- (Rupees Twenty Thousand only) as costs. The said amount should be paid on or before 19.07.2024. In case the costs of Rs.20,000/- is not paid within that date, the benefit of this order will not enure to the plaintiff. If the costs of Rs.20,000/- is paid as directed by this order, the learned Additional District Munsif at Ariyalur is requested to number the application to restore and order the same. He shall thereafter take up the application to bring on record the legal representatives of the deceased defendant and allow it and grant sufficient time to the plaintiff to file an amended plaint. He is also requested to take note that the suit is pending for the past 12 years and ensure that the suit is disposed of as expeditiously as possible.



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9. With the above directions, the Civil Revision Petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

KST

To

The Additional District Munsif

Ariyalur



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V. LAKSHMINARAYANAN, J.

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