



C.R.P.No.3965 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 27.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.3965 of 2024

S.Swathi

... Petitioner

Vs

1. Venugopal

2. Sivanesan

Gnanasegaran (Died)

3. Lakshmi

4. K.Ganapathy

5. Premavathy

6. Raghul

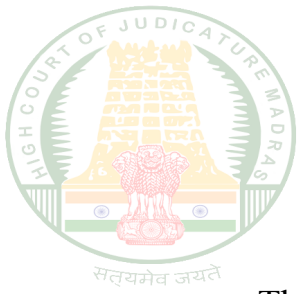
7. Ramya

... Respondents

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, pleaded to set aside the fair and final order dated 31.07.2024 in I.A.No.4 of 2023 in O.S.No.167 of 2012 on the file of the Principal Sub Court, Puducherry.

For Petitioner : Mr.S.Vijayakumar

For R4 : Mr.A.Muthukumar



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ORDER

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

2.1. The revision petitioner/plaintiff had filed a suit against the defendants before the Principal Sub Court, Puducherry, in O.S.No.167 of 2012 seeking declaration and to deliver the suit property. Since the petitioner/plaintiff did not appear before the trial Court, the suit was dismissed for default on 03.01.2018.

2.2. Thereafter, the petitioner had filed an application in I.A.No.4 of 2023 under Section 5 of the Limitation Act to condone the delay of 86 days in filing a petition to restore the said suit. The contesting respondents had filed counter and objected for allowing the petition.

2.3. The learned Principal Sub Judge, Puducherry, holding that the petitioner/plaintiff has not shown sufficient cause to condone the delay, had dismissed the petition vide order dated 31.07.2024. Aggrieved over the same, the petitioner has filed the present revision petition.



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3. The submissions of the learned counsel appearing for the petitioner are as follows :-

3.1. The suit in O.S.No.167 of 2012 filed by the petitioner before the Principal Sub Court, Puducherry, was posted for trial on 06.10.2017 and since the petitioner was suffering from viral fever, she was unable to appear before the trial Court on 06.10.2017 and on subsequent days, thereby, the suit came to be dismissed for default on 03.01.2018 for non-appearance.

3.2. The petitioner was able to resume normal only after 86 days and after her recovery, she has filed an application in I.A.No.4 of 2023 seeking to condone the delay of 86 days in filing the petition seeking to restore the suit. However, the trial Judge, without taking into consideration the reasons stated by the petitioner, had dismissed the petition on 31.07.2024.

3.3. The substantive rights of the petitioner is involved in this case and, if the delay is not condoned and the suit is not restored, the petitioner will be put to grave hardship.

4. Per contra, the learned counsel appearing for the fourth respondent submitted that the petitioner had called absent on 06.10.2017 and even thereafter,



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on several occasions, there is no representation for the plaintiff. He further submitted that even when the matter was posted specifically for appearance of the plaintiff, the petitioner did not appear before the Court, thereby, the suit came to be dismissed for default on 03.01.2018. He also submitted that the petitioner though claims that she had filed the condone delay petition within 86 days, she did not pursue the matter and ultimately the application was only numbered during the year 2023 and the petitioner had willfully delayed the proceedings.

5. In reply, the learned counsel for the petitioner submitted that the petition seeking condone the delay was filed within 86 days of the dismissal of the suit, however, the Court concerned had delayed in numbering the same. He further reiterated that the petitioner has got a good case, therefore, if the suit is not restored, the petitioner would be put to grave hardship. He also submitted that the petitioner is ready to cooperate for the speedy disposal of the suit and she is also ready to pay suitable compensation to the respondents for the inconvenience caused. Hence, he prayed to set aside the order dated 31.07.2024.

6. Heard both sides and perused the materials available on record



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7. A perusal of record shows that the substantive right of the petitioner is also involved in this case and the delay in filing the condone delay petition is only 86 days. Though the petition is stated to have been filed in the year 2018 itself, it has been numbered only in the year 2023. In view of the above, this Court is of the opinion that one opportunity may be given to the petitioner in the interest of justice on imposition of terms and cost.

8. Accordingly, the Civil Revision Petition stands allowed and the order passed by the learned Principal Sub Judge, Puducherry, in I.A.No.4 of 2023 in O.S.No.167 of 2012 on 31.07.2024, is hereby set aside and the delay of 86 days is condoned. Thereby, the suit in O.S.No.167 of 2012 shall be restored, on condition that the petitioner deposits a sum of **Rs.10,000/-** before the trial Court as costs within a period of **two weeks** from the date of receipt of a copy of this order. On such deposit being made, the learned Principal Sub Judge, Puducherry, shall restore the suit and dispose the suit as expeditiously as possible, preferably, within a period of **six months** from thereon. The amount of cost shall be disbursed to the contesting fourth respondent/K.Ganapathy on filing of memo.



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Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No
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To

1. The Principal Sub Judge, Puducherry.
2. The Section Officer,
VR Section, High Court of Madras.

Note : Registry is directed to return the original papers to the counsel for the petitioner .



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A.D.JAGADISH CHANDIRA, J.

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