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C.R.P.(MD)No.2105 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2025

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD)No.2105 of 2024

R.Nagalakshmi

...Petitioner/Petitioner/Plaintiff

Vs.

S.Azhagarsamy

...Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the order, dated 07.02.2024 made I.A.No.3 of 2023 in I.A.No.2 of 2023 in O.S.No.373 of 2019 on the file of the Principal District Munsif, Tiruchirapalli.

For Petitioner : Mr.S.Rajasekar
for M/s.S.Lenin Prabu

For Respondent : Mr.P.Mahendran

ORDER

The revision petition has been filed by the plaintiff in O.S.No.373 of 2019, on the file of the Principal District Munsif Court, Trichirappalli, challenging the order passed in I.A.No.3 of 2023, dated 07.02.2024.

2.The petitioner herein as plaintiff had filed the above said suit for the relief of permanent injunction restraining the defendant from in any way



disturbing her possession and enjoyment over the suit schedule properties.

When the suit was posted on 20.12.2022, the plaintiff had not appeared before the trial Court and the same was dismissed for default. The plaintiff had filed I.A.No.2 of 2023 to condone the delay of 167 days in filing an application to restore the suit. The trial Court after considering the submissions made on either side had dismissed the said application on 06.10.2023.

3.The plaintiff had filed I.A.No.3 of 2023, seeking to review the order dated 06.10.2023, on the ground that the learned Counsel appearing for the defendant had made an endorsement in I.A.No.2 of 2023 to the effect that he has no objection for allowing the said application on terms. However, without considering the said endorsement, I.A.No.2 of 2023 was dismissed by the Court on merits.

4.The trial Court after going through the Court records has found that no such endorsement was made by the defendant Counsel in I.A.No.2 of 2023 for allowing the said application on terms. On the other hand, the defendant has filed a counter and has made his submission objecting to condone the delay in restoring the suit. When there is no such endorsement, the question of reviewing the order passed in I.A.No.2 of 2023, dated 06.10.2023 does not arise. This order passed in the review application is under challenge in the present revision petition.



5. According to the learned Counsel appearing for the revision petitioner, the order was passed in I.A.No.2 of 2023, primarily on the ground that R.C.O.P. proceedings have got culminated and order of eviction has been passed. In the said circumstances, the wife of the tenant does not have right to file a suit for permanent injunction. In the said circumstances, the trial Court ought to have given an opportunity to prosecute the suit. He further contended that there is an endorsement on the side of the Counsel for the defendant that the application may be allowed on terms.

6. Per contra, the learned Counsel appearing for the respondent/defendant had contended that no such endorsement was made for allowing the application for condonation of the delay. On the other hand, it was horly contested by the defendant, in view of the eviction order passed in R.C.O.P.No.83 of 2009.

7. I have considered the submissions made on either side and perused the materials available on record.

8. The review petitioner has not challenged the order passed in I.A.No.2 of 2023, wherein the Court has rejected the request for condonation of the delay of 167 days in an application to restore the suit. The present revision petition has been filed only challenging an order passed in I.A.No.3 of 2023, which was



filed to review the order passed in I.A.No.2 of 2023. It is settled position of law that unless the ingredients specified under Order 47 Rule 1 of CPC are satisfied, the review application is not maintainable.

9.The only ground on which the review was filed by the revision petitioner herein is that, the defendant counsel has made an endorsement for allowing the condonation of delay application on payment of costs, which was ignored by the Court. The Court after going through the records has arrived at a specific finding that no such endorsement was made. On the other hand, the Counsel for the defendant had filed a counter and horly contested the condone delay application. Thereafter, order has been passed on merits by the Court. Therefore, it is clear that there was no ground for the trial Court to review the order, dated 06.10.2023, made in I.A.No.2 of 2023.

10.In the said circumstances, this Court does not find any illegality or infirmity in the order impugned in the revision petition. Therefore, there are no merits in the revision petition. Accordingly, this Civil Revision Petition is dismissed. No costs.

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Index: Yes/No
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R.VIJAYAKUMAR, J.

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To

The learned Principal District Munsif, Tiruchirapalli.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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