

IN THE COURT OF THE DISTRICT JUDGE, KARUR.

**PRESENT:- THIRU R. SHANMUGASUNDARAM, B.Com., L.L.B.,
PRINCIPAL DISTRICT JUDGE.**

Thursday, the 01st day of August 2024

I.A.No.08/2024 in O.S.No.54/2021

1. Sugantha
2. Iswarya
3. Thanumalaiyan

...Petitioners/ Plaintiffs

vs.

1. Papathi
2. Senthilkumar
3. Mahamuni
4. Joint Sub-Registrar No.I,
District Collector Office,
Thanthonimalai, Karur.

...Respondents/Defendants

This petition coming on before me for hearing on 22.07.2024 in the presence of Thiru K. Ravi, advocate for the petitioners and Thiru. R. Jegan, advocate for the respondent no.3 and respondent no.1 and 2 were called absent and set ex parte and Thiru. R. Kudiyarasu, Government Pleader for the respondent no.4 and upon hearing the arguments on both sides and having stood over for consideration till this day, this Court passed the following

ORDER:-

This petition was filed by the plaintiff in the above suit seeking to restore the suit to file which was dismissed for default on 23.04.2024.

Brief averments of the affidavit filed by the petitioner no.1/plaintiff no.1 is as follows:-

2) The 1st petitioner is the 1st plaintiff in the above suit. Further, the 1st petitioner submits that the 2nd petitioner and the 3rd petitioner are the daughter and son of the 1st petitioner/1st plaintiff. The 1st petitioner/1st plaintiff has filed the above suit

against the respondents/defendants for permanent injunction and for other reliefs. Further, she submits that the above said case was posted for trial on 23.04.2024. Unfortunately, on 21.04.2024 the 1st petitioner/1st plaintiff admitted in the hospital and taking treatment for diarrhea and he was not able to appear before this Court. Hence, she could not appear before this Court on 23.04.2024 and consequent to her absence, this Court has called her and dismissed the suit for default on 23.04.2024. She further submits that after recovering from her illness, she met his counsel and his counsel informed her about the dismissal of the case and advised her to file this petition to restore the suit to file which was dismissed for default on 23.04.2024. She submits that her absence is neither willful nor wanton. She submits that if this petition is not allowed, she will be put to much loss and hardship and if this petition is allowed, the respondent will not be prejudiced. Hence, prays to allow this petition.

Brief averments of the counter filed by the 3rd respondent/3rd defendant is as follows:-

3) The respondent has filed a detailed counter denying all the allegations and averments in the affidavit. It is submitted that the 3rd respondent/3rd defendant strongly denied the reason stated by the 1st petitioner/1st plaintiff in her affidavit. Further, it is submitted that the case has been posted in the list for the month of February 2024. It has been submitted that there is no sufficient and reasonable reason taken place in the affidavit for the failure of the petitioner herein. Therefore, the petitioner has not filed this petition with clean hands. There is no merits in the petition. Hence, prays to dismiss the petition with costs.

4) This Court considered the rival submissions on both sides.

5) The question before this Court is whether the petition has to be allowed or not?

ANSWER TO THE POINT:-

6) The petitioners are the plaintiff and the respondents are the defendants in the suit. The petitioners/plaintiffs have filed the suit for declaration that the sale deed in favour of the 3rd defendant dated 25.11.2013 is null and void and for permanent

injunction restraining the defendant, their men, agents from encumbering the properties in favour of any third parties, and for permanent injunction restraining the defendant, their men, agents from interfering with the plaintiff at the residence and for cost. Further, the defendant no.3 appeared through their counsel and filed written statement on 27.6.2022 and the defendant no.4 filed written statement on 23.03.2022. Since, the defendant no.1 and 2 did not file written statement and set exparte on 23.03.2022.

7) Based on the pleadings, this Court framed eight issues and posted the suit in the list on 14.02.2024. On that day, the plaintiff filed a petition to declare the then minor 3rd plaintiff as a major. The above said application was allowed and consequently, the plaint was amended and the amended copy was filed on 04.04.2024. The case was adjourned to 15.04.2024, for trial as list case. On 15.04.2024, at request of the counsel for the petitioner, the case was adjourned to 23.04.2024. On 23.04.2024, the plaintiff was not ready for trial. The counsel for the plaintiff filed an application to adjourn the case and the same was dismissed and in consequence, the suit was dismissed for default. Now, the petitioners have filed the present petition stating that on 21.04.2024 the petitioner no.1 was suffering from diarrhea and she went to hospital. Therefore, the petitioner no.1 was not able to appear before this Court and failure to appear on that day was not willful. Further, the 3rd respondent filed a counter and the 4th respondent has not filed the counter. Further, the 3rd respondent denies the allegation made in the averments in the petition.

8) This Court has perused the records. On perusal of the affidavit, it reveals that on 21.04.2024 the 1st petitioner/1st plaintiff went to hospital and was taking treatment for diarrhea and hence she was not able to appear before this Court on 23.04.2024 and consequently he was absent and this Court has called the petitioners and dismissed the suit for default on 23.04.2024.. Therefore, it is seen that the reason stated by the 1st petitioner/1st plaintiff seems to be genuine and reasonable. Normally, a litigant should not be denied to contest the case on merits. Therefore, it is always desirable to decide the case on merits rather than to allow the suit without trial.

However, the petitioner must show sufficient cause to condone the delay. Now, it is well settled law that the Court should adopt liberal approach while condone the delay. Further, if the failure or the absence on the part of the petitioner is malafied or intentional, then Court should not show discretion in favour of the petitioner. The case in hand, the petitioners/plaintiffs have genuine, good and valid reason to restore the suit. Therefore, by allowing the application no prejudice will be caused. Further, by allowing the application it does not mean that Court has accepted the claim and contention made by the petitioner. Therefore, in view of the above stated facts and circumstances, the petition filed by the petitioners are deserves to be allowed.

In the result, this petition is allowed with condition that the petitioner shall proceed the case when the case is posted for trial.

Dictated to the steno-typist, transcribed by her corrected and pronounced by me in open Court on this the 01st day of August 2024.

PRINCIPAL DISTRICT JUDGE,
KARUR.