

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) No.3170 of 2011

and

M.P.No.1 of 2011

Pitchaipillai

.. Petitioner

vs

1.Nagarathinam

2.Kaliamoorthy

.. Respondents

Revision filed under Section 115 of Civil Procedure Code, against the order dated 08.11.2010 passed in I.A.No.602 of 2010 in O.S.No.340 of 2005 on the file of the District Munsif Court, Jayankondam.

For Petitioner : Mr.R.Thiyagarajan

For Respondents : Mr.P.Vijendran (for R1)
R2 – Given up

WEB **ORDER** COPY

This Civil Revision Petition is directed against the order dated 08.11.2010 passed in I.A.No.602 of 2010 in O.S.No.340 of 2005 on the file of the learned District Munsif, Jayankondam, allowing the

petition seeking to condone the delay of 132 days in filing petition to restore I.A.Nos.679, 680 and 1005 of 2009. The petitioner is the plaintiff.

2. The plaintiff has filed the suit for declaration of his title to the suit property and for costs. The suit was dismissed for default and to restore the suit, the plaintiff has filed I.A.No.679 of 2009. He had also filed I.A.No.680 of 2009 seeking amendment of the plaint. Since there was a delay in filing restoration petition, the plaintiff has filed I.A.No.1005 of 2009 seeking to condone the delay in filing the restoration petition. When I.A.No.1005 of 2009 was posted on 10.11.2009 for serving of notice to the other side, the plaintiff had failed to appear before the Court, resultantly, I.A.No.1005 of 2009 was dismissed for default. Consequently, I.A.Nos.679 and 680 of 2009 were also dismissed.

3. After coming to know about the dismissal of I.A.Nos.1005 of 2009 for default and also I.A.Nos.679 of 680 of 2009, the plaintiff has filed petition to restore the aforesaid petitions with a delay of 132 days in filing the petition alleging that since the plaintiff was suffering from Chikungunya, he was not able to contact his counsel and file

petition within the time and therefore, the delay was occurred. According to the petitioner, the delay is neither wilful, nor wanton.

4. Resisting I.A.No.602 of 2010, the first defendant filed counter stating that the plaintiff had wantonly failed to give notice to the other side in the restoration petition. The plaintiff was not interested in pursuing the matter. In order to drag on the proceedings and to give hardship to the first defendant, the plaintiff has filed petitions. The delay of 132 days was not properly explained.

5. The trial Court allowed I.A.No.602 2010 by imposing cost of Rs.500/- to be payable by the plaintiff to the defendants on or before 16.11.2010, failing which the petition will stand dismissed. Aggrieved by the same, the first defendant has preferred this Civil Revision Petition.

6. I heard Mr.R.Thiyagarajan, learned counsel for the petitioner and Mr.P.Vijendran, learned counsel for the first respondent and also perused the materials available on record.

7. The grievance of the plaintiff is that since he was suffering

from Chikungunya, he was unable to attend the Court on 10.11.2009 when I.A.Nos.1005, 679 and 680 of 2009 were posted and because of his non-appearance, I.A.No.1005 of 2009 filed to condone the delay in filing the restoration petition was dismissed for default. According to the plaintiff, the delay of 132 days in filing restoration petition is neither wilful nor wanton and for bona fide reason, the plaintiff was not able to attend the Court.

8. Being satisfied with the reason, the trial Court allowed I.A.No.602 of 2010 on payment of costs. On a perusal of the order under revision, it is seen that the trial Court had given reasoning for allowing the petition. Nothing has been produced by the plaintiff to show that on the date when I.A.No.1005 of 2009 was listed, he was suffering from Chikungunya. However, considering the vintage of suit and also considering the difficulties caused to the defendants, the trial Court allowed the petition on payment of costs of Rs.500/- payable to the defendants. There is no perversity in the order of the trial Court. No valid grounds had been made out to interfere with the order of the trial Court and the order of the trial Court is liable to be confirmed.

9. In the result, the Civil Revision Petition is dismissed. The

trial Court is directed to restore I.A.No.1005 of 2009 and also I.A.Nos.679 and 680 of 2009 and decide the same within a period of one month from the date of receipt of a copy of this order. After restoring the suit, the trial Court is directed to give opportunity to both the parties and take up the suit on day-to-day basis, without giving any unnecessary adjournments to either party and dispose of the same within a period of one month thereafter, as the suit is 12 years old. Both the parties are directed to co-operate with the trial Court for early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

31.01.2017

Note: Issue order copy on 12.07.2018

vs

Index : Yes

Internet : Yes

To

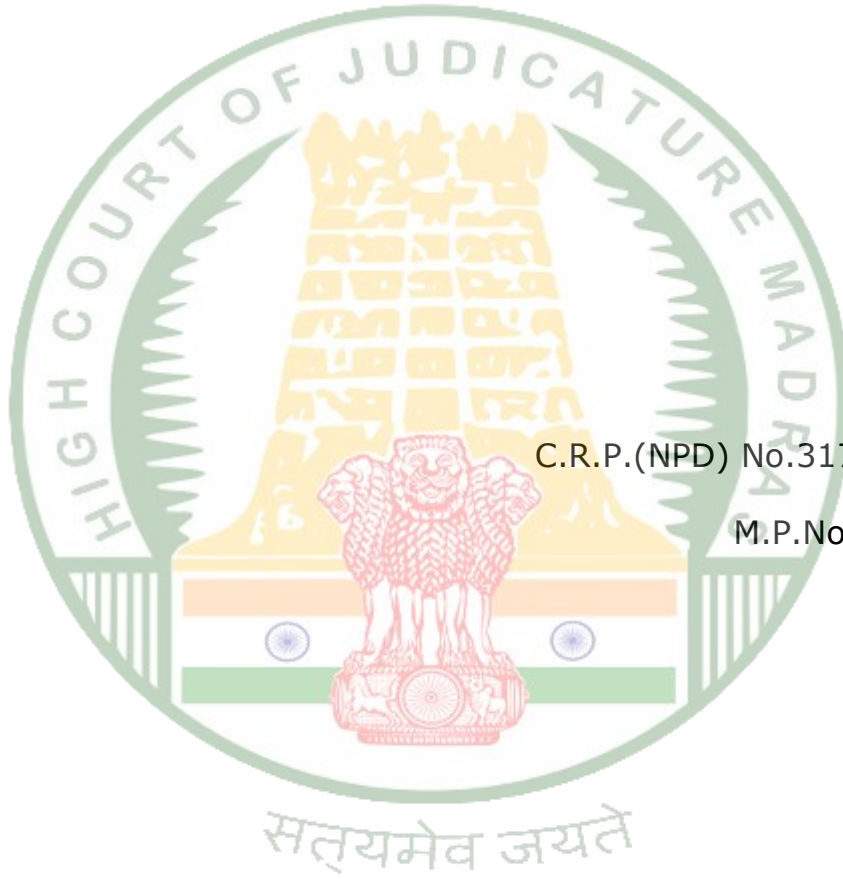
The District Munsif Court,
Jayankondam.

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M.V.MURALIDARAN, J.

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