

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(NPD)No.1141 of 2012

1.Kumudavalli (deceased)  
2.RAjarajeswari (deceased)  
3.Manonmani

.. Petitioners

Vs.

1.C.K.Pattabiraman  
2.C.K.Manivasagam  
3.P.Boominathan

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C.,  
against the Judgment and decree dated 29.11.2011 made in  
I.A.No.749 of 2007 in O.S.No.688 of 1982 on the file of the District  
Munsif Court, Ponneri.

For Petitioners : Mr.N.Karthikeyan

For R2 : Mr.N.R.Anantha Ramakrishnan  
R1 & R3 : Dismissed vide Court  
order dated 11.09.2015

ORDER

The Civil Revision Petition is filed against the Judgment and decree dated 29.11.2011 made in I.A.No.749 of 2007 in O.S.No.688 of 1982 on the file of the District Munsif Court, Ponneri.

2. The petitioners 1 and 2 are the plaintiffs and respondents are the defendants in O.S.No.688 of 1982. The third petitioner is the third party to the suit. According to the third petitioner, the first and second petitioners are her grandmother and mother respectively and they filed the said suit for recovery of possession of the suit property from the respondents 1 to 3. The first petitioner died on 10.10.1989. After her death, the mother of the third petitioner did not contact her advocate and the suit was dismissed for default on 26.10.1990. Subsequently, the third petitioner's mother, the second petitioner, also died on 02.11.2001. In these circumstances, the third petitioner filed the present I.A.No.749 of 2007 to condone the delay of 5873 days in filing the petition to set aside the abatement of the suit.

3. According to the third petitioner, her mother/second

petitioner is an orthodox lady and she was mentally and physically affected. She was also suffering from jaundice and could not contact her advocate and file the application immediately in the year 1990. The second petitioner died on 02.11.2001. The third petitioner came to know about the suit, when she came across the letter sent by the advocate addressed to her grandmother in the year 2007 and immediately she contacted the advocate and filed the present application.

4. The second respondent filed counter affidavit and the same was adopted by other respondents and denied the averments made in the affidavit filed in support of the said application.

5. The learned Judge, considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application holding that the petitioner has not given any reason for filing the application in the year 2007 for the dismissal of the suit in the year 1990.

6. Against the said order of dismissal dated 29.11.2011 made

in I.A.No.749 of 2007, the present Civil Revision Petition is filed by the petitioner.

7. Heard the learned counsel for the petitioner as well as second respondent and perused the materials available on record.

8. From the materials available on record, it is seen that the third petitioner stated that after the death of the first petitioner/her grandmother, the second petitioner/mother of the third petitioner was mentally and physically affected and she was suffering from jaundice and subsequently, she died on 02.11.2001. The third petitioner was not aware of the suit and after death of her mother, she was looking after the family and after she came across the letter from the advocate addressed to her grandmother, she came to know about the suit and filed the present application to condone the delay in filing the petition to set aside the abatement. The petitioner filed application to condone the delay of 5873 days i.e., more than 16 years from the date of dismissal of the suit.

9. It is a well settled that application for condoning the delay

must be considered liberally and length of delay is not a criteria. The Courts must see whether the parties have given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits.

10. In the present case, the third petitioner has not given any sufficient and valid reason for condonation of such huge delay of 5873 days. The learned Judge has rightly considered all the above facts and dismissed the application by giving cogent and valid reasons. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 29.11.2011.

11. In the result, this Civil Revision Petition is dismissed. No costs.

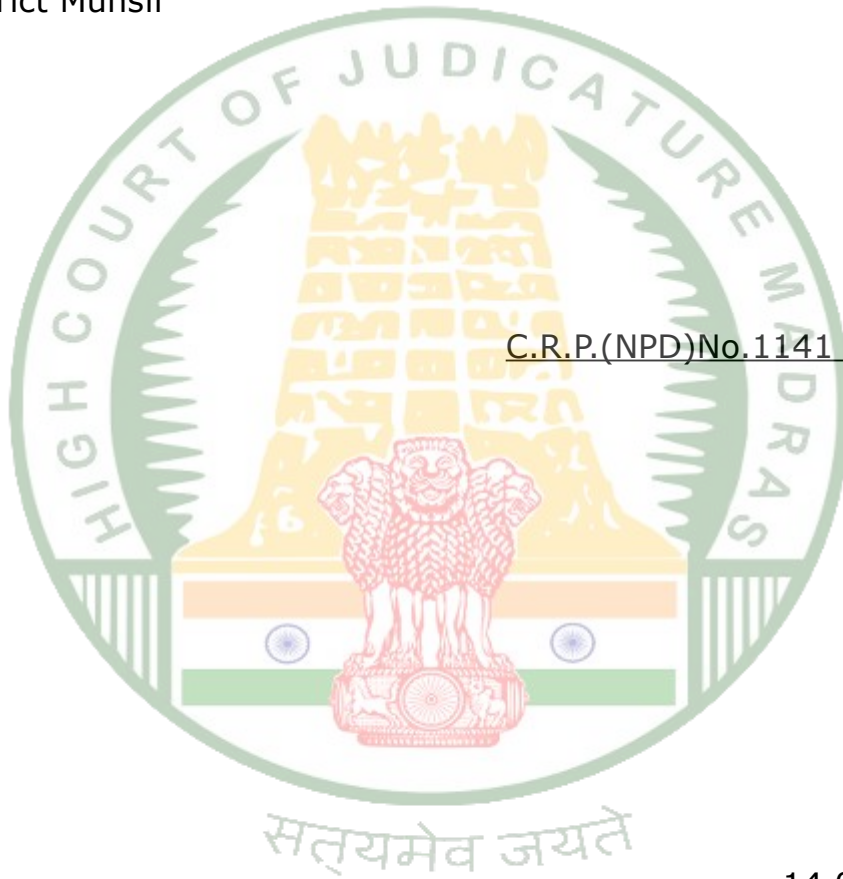
Index : Yes/No  
dm/kj

**V.M.VELUMANI, J.**

dm/kj

To

The District Munsif  
Ponneri.



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