

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:20.12.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP. (NPD) No.1838 of 2003
and
C.M.P.No.19318 of 2003

K.Rajamanickam

.. Petitioner

Vs.

K.Durga

.. Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the order and decree made in I.A.No.474 of 2001 in O.S.No.503 of 1994 on the file of the II Additional District Munsif, Salem, dated 08.08.2003.

For Petitioner : Mr.L.Chandra Kumar
For Respondent : No Appearance

O R D E R

This petition is filed against the order and decree made in I.A.No.474 of 2001 in O.S.No.180 of 1996 on the file of the learned II Additional District Munsif, Salem, dated 08.08.2003.

2. To set aside the ex-parte decree, the revision petitioner has filed an application in I.A.No.474 of 2001 with a delay of 94 days. The revision petitioner has averred in the affidavit filed in support of the condone delay application that the petitioner had no knowledge about his counsel reporting "no instruction" and that because of another proceedings before this Court, the petitioner was irregular in his home town and therefore had no knowledge about the order of the trial court. In the meantime, the revision petitioner received notice in the execution proceedings. Thereafter, only he came to know that an ex-parte decree was passed against him in the said suit. Thereafter, he filed an application to set aside the ex-parte decree with a delay of 94 days.

3. The revision petitioner stated that the delay is neither willful nor wanton, but the same is beyond his control and without his knowledge. Hence, he prayed to condone the delay of 94 days in seeking to set aside ex-parte decree.

4. The case of the respondent in lower court is that the petitioner has not given any valid reason for the huge delay of 94 days in filing the appeal. Since a huge delay should not be condoned for the simple reason, the petitioner has not explained each and every day delay. Considering the case of both sides, the learned Judge dismissed the petition filed by the petitioner. Challenging the said order, the present Civil Revision Petition has been filed.

5. I heard Mr.L.Chandra Kumar, learned counsel appearing for the petitioner and there was no representation on behalf of the respondent and perused the materials available on record.

6. Admittedly, the petitioner has filed I.A.No.474 of 2001 for condoning the delay of 94 days in filing the appeal, but the same was dismissed on 08.08.2003., on the ground that the petitioner has not given any valid reason for the huge delay in filing the appeal.

7. The Hon'ble Supreme Court in a recent Judgment in Civil Appeal No.(S).3777 of 2015 it is held that there was a delay of 882 days delay in preferring an appeal suit and the said petition was dismissed by this Court by order dated 05.06.2013 in CRP(NPD)No.266 of 2011 and an appeal was filed before the Hon'ble Apex Court in Civil Appeal No.(S).3777 of 2015 in which the Hon'ble Apex Court has passed an order as follows:

"Leave granted.

This appeal arises out of an order dated 5th June, 2013, passed by the High Court of Judicature at Madras whereby CRP(NPD)No.266 of 2011 filed by the appellant has been dismissed and the order passed by the first appellate court declining condonation of 882 days in the filing of the appeal by the appellant affirmed.

We have heard learned counsel for the parties at some length. We are satisfied that in the facts and circumstances of the case, the first appellate court could and indeed ought to have condoned the delay in the filing of the appeal. Since, however, the delay is fairly inordinate, we are inclined to direct condonation subject to payment of costs.

We accordingly allow this appeal, set aside the orders passed by the High Court and that passed by the first appellate Court with the direction that upon deposit of a sum of Rs.50,000/- (Rupees fifty thousand) towards costs before the first

appellate court within six weeks from today, the delay in the filing of the appeal shall stand condoned. The first appellate court shall hear and dispose of the first appeal filed by the appellant expeditiously and as far as possible within a period of six months from the date the costs are deposited by the appellant. The amount of costs shall be paid to the respondent.

The appeal is allowed in the terms and to the extent indicated above."

The Hon'ble Apex Court has allowed the Civil Appeal No.(S).3777 of 2015 on condition that the appellant shall pay a sum of Rs.50,000/- as cost to the respondent in the said appeal.

8. Therefore, applying the said judgment though the petitioner has not given any valid reason for each and every day delay, the revision petitioner has averred in the affidavit filed in support of the condone delay application that the petitioner had no knowledge about his counsel reporting "no instruction" and that because of another proceedings before this Court, the petitioner was irregular in his home town and therefore had no knowledge about the order of the trial court. Hence, there is a delay of 94 days in filing the appeal. Therefore, by giving one more opportunity to this petitioner, this civil revision petition has to be allowed by setting aside the order passed in I.A.No.474 of 2001, but the petitioner should compensate the respondent.

9. In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.474 of 2001, on condition that the petitioners should pay a sum of Rs.500/- as cost to the Chief Justice Relief fund, Madras High Court, Madras, within a period of two weeks from the date of receipt of a copy of this order;

(b) on production of payment receipt within the time stipulated by this Court, the trial Court viz. the learned II Additional District Munsif, Salem, is hereby directed to number the set aside petition and dispose of the same within a period of three weeks, by giving notice to either parties;

(c) On passing order in the set aside petition, the learned II Additional District Munsif, Salem, is directed to take up the suit in O.S.No.503 of 1994 on day to day

basis, without giving any adjournments to either parties and to dispose the same within a period of three months thereafter. Both the parties are hereby directed to give their fullest co-operation for early disposal of the appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

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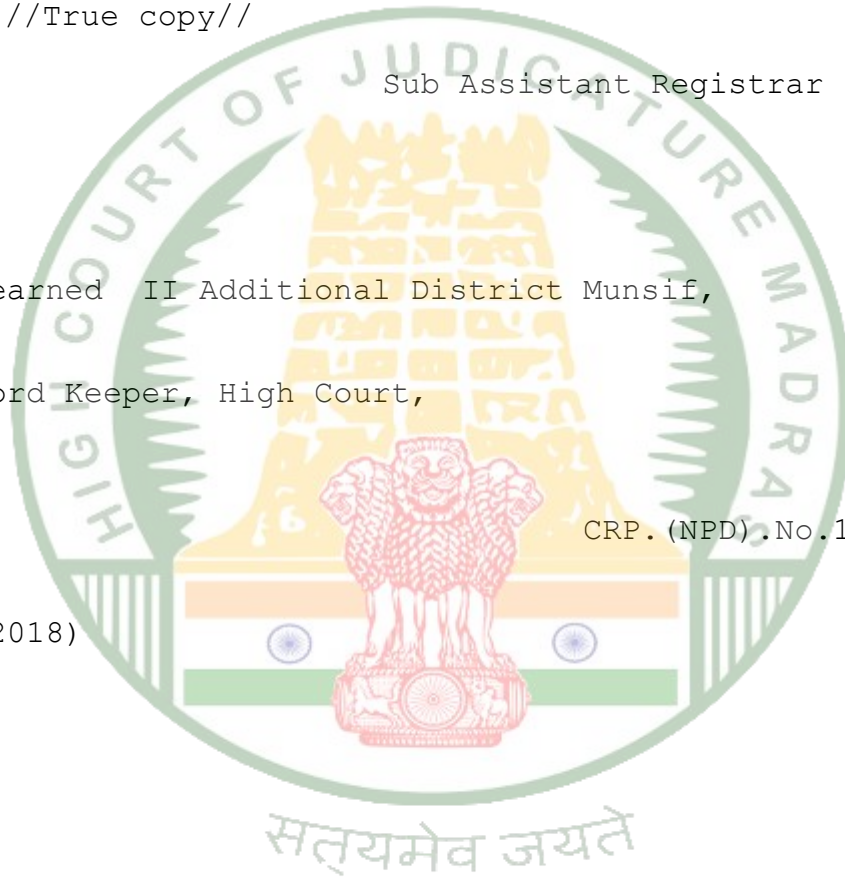
To

1.The learned II Additional District Munsif,
Salem.

2.The Record Keeper, High Court,
Madras.

CRP. (NPD).No.1838 of 2003

NRI (CO)
GN(22/01/2018)



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