

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.358 of 2008
& M.P.No.1 of 2011

Mani

.. Petitioner

Vs.

1.Thayalnayagi
2.Jayaraj

.. Respondents

PRAYER: Civil Revision Petition filed Under Section 115 of C.P.C., against the fair and decretal order dated 14.11.2007 made in I.A.No.68 of 2007 in I.P.No.13 of 1999 on the file of the Additional Sub Judge, Salem.

For Petitioner : Mr. C.Rajeseakaran

For R1 : Mr.R.Margabandhu

For R2 : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 14.11.2007 made in I.A.No.68 of 2007 in I.P.No.13 of 1999 on the file of the Additional Sub Judge, Salem.

2. The petitioner filed I.P.No.13 of 1999 on the file of the Additional Sub Judge, Salem, against the respondents for adjudging the first respondent as insolvent, resting the properties of the first respondent with the official receiver, Salem. The said I.P was dismissed for default on 28.09.2006. The petitioner filed I.A.No.68 of 2007 to condone the delay of 262 days in filing the petition to restore the I.P.No.13 of 1999. According to the petitioner, he went to North India as rig driver and he intended to return in September 2006. But his stay was extended for some more months. In the circumstances, he could not contact his Advocate to know about the stage of the insolvency proceedings. Subsequently, he came to know about the dismissal of the insolvency petition and he admitted that he ought to have filed the petition before 27.10.2006. Immediately he filed the application with the present petition to condone the delay, stating that the delay in filing the petition to restore I.P was neither wanton nor wilful, but due to the reasons stated above.

3. The respondents 1 and 2 filed separate counter affidavit and submitted that the petitioner had not given any valid reason

for condoning the delay. The petition was filed in O.S.No.767 of 2004 on the file of the Principal District Munsif, Salem and obtained decree and filed E.P.No.352 of 2007 for sale of the second item of the property in the schedule. The petitioner cannot claim two relief at the same time.

4. The learned Judge, dismissed the application, holding that the petitioner has not produced any substantial evidence to condone the delay of 262 days in filing the petition to restore the I.P and petitioner has not produced any evidence to show that he went to North India for his work and stayed there.

5. Against the said order of dismissal dated 14.11.2007 made in I.A.No.68 of 2007 in I.P.No.13 of 1999, the present civil revision petition is filed by the petitioner.

6. Heard the learned counsel appearing for the petitioner and first respondent and perused the materials available on record. Though notice was served on the second respondent and his name is printed in the cause list, there is no representation either in person or through counsel.

7. The petitioner has come out with the present application to condone the delay of 262 days in filing the application to restore the I.P on the ground that he went to North India for his work, intending to return in the month of September,2006. But his stay was extended and he stayed there for some more months. The learned Judge has considered the fact that the petitioner has not produced any documents to substantiate his case, dismissed the application. Further, the I.P is of the year 1999. The petitioner has not taken any effective steps in eight years till 2006. He has also filed O.S.No.767 of 2004 and obtained the decree against the respondents. E.P.No.352 of 2007 was filed for sale of the second item of the property. The petitioner cannot maintain petition for declaring the first respondent as insolvent and also file suit for recovery of money and E.P for sale of the property. The learned Judge considered all the above facts and dismissed the application. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge.

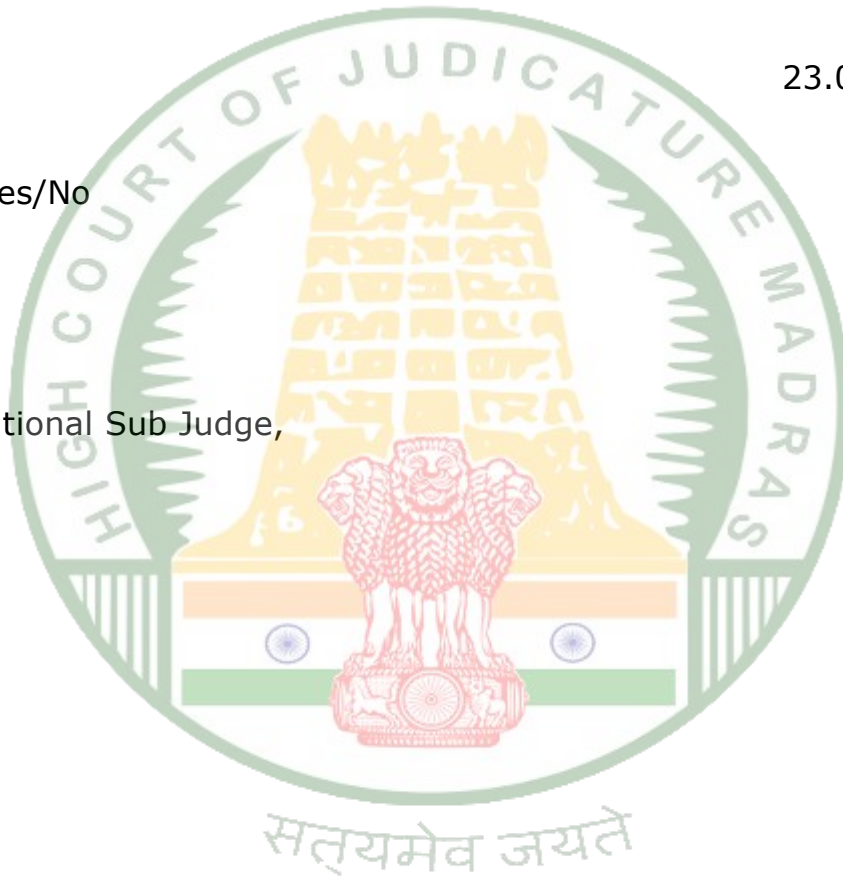
8. Accordingly, the civil revision petition is dismissed. No costs. Connected miscellaneous petition is also dismissed.

23.08.2017

Index: Yes/No
gsa

To

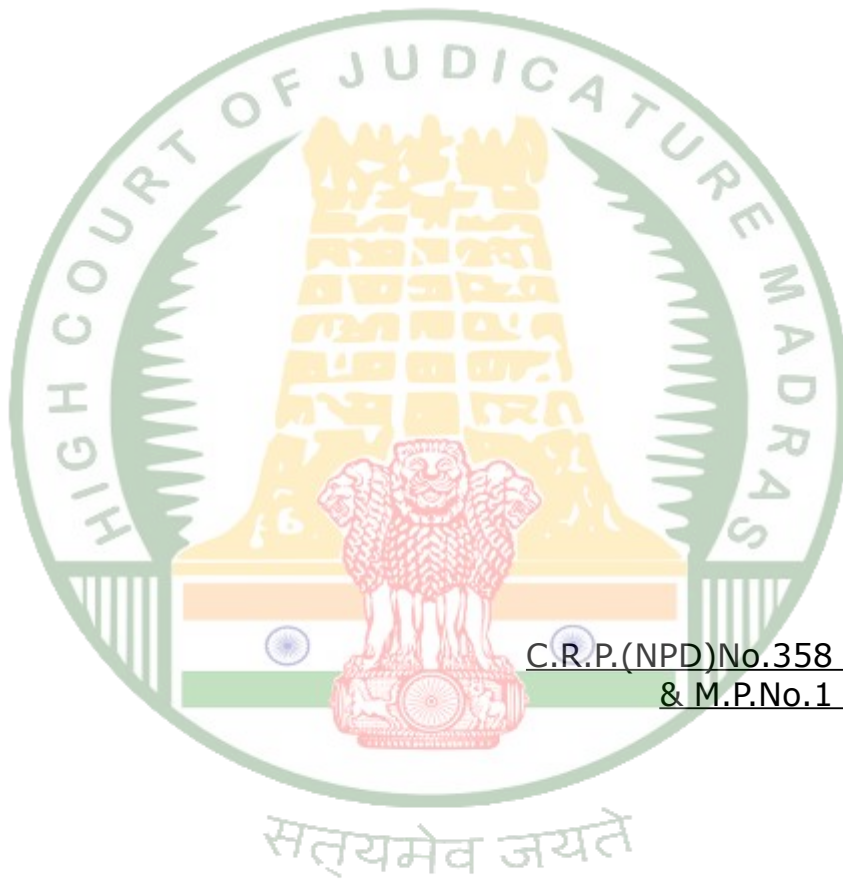
The Additional Sub Judge,
Salem.



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V.M.VELUMANI, J.

gsa



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