

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CRP.(NPD).NO.683 of 2016
and CMP.No.3510 of 2016

A.Jayanthi

... Petitioner

versus

1. T.Kokila
2. S.Umayal
3. S.Rajalakshmi

4. The Manager,
H.D.F.C. Bank,
No.1 Venkataraman Road,
Round Road, Mahalingapuram,
Mahalingapuram Post, Pollachi-642 002.

5. The Manager,
I.D.B.I Bank,
Kamaraj Road, Mahalingapuram
Pollachi-642 002.

... Respondents

PRAYER: Civil Revision Petition has filed under Section 115 of Civil Procedure Code, against the Order & Decreetal Order dated 11.12.2015 made in I.A.No.523 of 2015 in O.S.No.336 of 2013 on the file of the Court of the I Additional District Judge, Coimbatore.

For Petitioner : Mr.T.P.Manoharan

For Respondent : M/s. Sarvabhuman Asso for R1
Mr.U.Baranidaran for R2

M/s. K.Sandhya for R3

ORDER

The present Civil Revision petition is filed against the order dismissing the petition filed under Section 5 of Limitation Act to Condone the delay of 42 days in filing the restoration petition.

2. The learned counsel appearing for the petitioner would submit that the petitioner had been to U.K to attend delivery of her daughter. However, no documents were produced before the Trial Court to show that she had gone to U.K and came back to India. Hence it was found that sufficient reasons to condone the delay was made out and the petition to condone the delay was dismissed.

3. Today, when the matter is taken up for hearing by this Court, the learned counsel appearing for the petitioner produced a copy of the Passport to show that the petitioner had been in U.K between 8th March 2015 and 17th June 2015. He would rely upon the judgment of the Supreme Court ***ESHA BHATTACHARJEE VS. MANAGING COMMITTEE OF RAGHUNATHPUR NAFAR ACADEMY AND OTHERS***

[2013 (12) SCC 649] wherein, the Apex Court has held that:

(i). There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

4. The learned counsel appearing for the respondent would submit that the mother of the first defendant is aged about 78 years (Senior Citizen). This Court on an earlier occasion, has fixed time limit for the disposal of the suit itself and on that basis she has given an undertaking that she will not alienate the B Schedule property till the disposal of the suit. She has given the undertaking on the fond hope and bonafide impression that the suit itself will be disposed of within four months. But petitioner is taking undue advantage and deliberately prolonging the matter.

5. The learned counsel for the petitioner would submit that the petitioner will not protract the proceedings and fully co-operate for the disposal of the suit as directed. The respondent is also willing to co-operate in this aspect and has no objections to restore the suit on file.

6. Considering the rival submissions, this court issues the following directions:-

i) The delay of 42 days in filing the petition to restore the suit is condoned and the order dated 11.12.2015 passed in I.A No.523 of 2015 is set-aside.

ii) The petition filed under Order IX Rule 9 CPC pending on the file of First Additional District Court, Coimbatore also stands allowed.

iii) Both the parties agreed to complete the proceedings on or before 10.11.2017. Accordingly, time limit is extended to the Trial Court for disposal of the suit in O.S.No. 336 of 2013, till 10.11.2017.

iv) The learned counsel for the petitioner would submit that the plaintiff will fully co-operate with the other party and complete the proceedings, in default, the undertaking given by the defendants will stand withdrawn. A direction is given to the Trial Court to conduct the trial on day-to-day basis and dispose of the suit on or before 10.11.2017.

7. With these observations, the Civil Revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

10.08.2017

Index : Yes/No

Internet : Yes/No

Note: Issue order copy on 17.08.2017

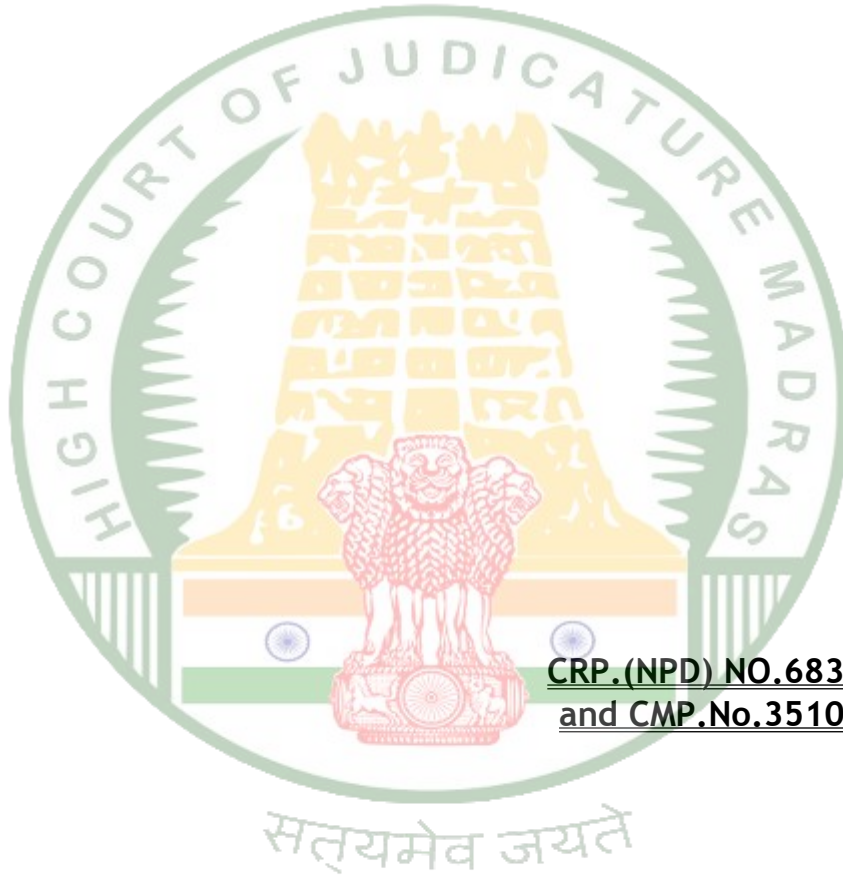
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To

The First Additional District Judge,
Coimbatore.

M.GOVINDARAJ, J.

bsm/raja



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