

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.569 of 2013
and M.P.No.1 of 2013

Arumugam

.. Petitioner

Vs.

1.Marimuthu
2.Kamala
3.Jayaraman
4.Chennimalai
5.Ramu

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of CPC, to set aside the order made in I.A.No.104 of 2011 in Unnumbered A.S.No. of 2009 dated 02.04.2012 by the Learned Principal Subordinate Judge at Salem.

For Petitioner : Mr.G.Pugazhenth

For Respondents : Mr.K.Moorthy

ORDER

This Civil Revision Petition is filed against the fair and decretal order made in I.A.No.104 of 2011 in Unnumbered A.S.No. of 2009 dated 02.04.2012.

2. The petitioner is the plaintiff, respondents are the defendants in O.S.No.421 of 2000 on the file of the Principal District Munsif, Salem. The petitioner filed the said suit for declaration and permanent injunction against the respondents. By the judgment dated 02.04.2004, the said suit was dismissed. Against the said decree and judgement dated 02.04.2004, the petitioner filed an Appeal along with I.A.No.104 of 2011 to condone the delay of 1750 days for filing the appeal.

3. According to the petitioner he had gone to Erode for coolie work and on coming to native place, he came to know about the dismissal of the suit. In the mean time, he was suffering from jaundice and was taking treatment. The respondents came for settlement. For the above stated reasons, the appeal was not filed in time. The respondents filed counter affidavit and opposed the said application. Before the learned Judge, the petitioner was examined as P.W1. The learned Judge dismissed the application stating that "the petition lacks bonafide".

4. Heard the learned counsel appearing for the petitioner and respondents and perused the materials available on record.

5. From the impugned order dated 02.04.2012 made in I.A.No.104 of 2011, it is seen that the learned Judge has not considered the averments in the affidavit filed by the petitioner and evidence let in by him. The learned Judge has not given any reason for dismissing the application as the same lacks bonafide. In view of the non-speaking order, the order of the learned Judge is set aside. I.A.No.104 of 2011 is restored to file and remitted back to the first Appellate Court with direction to the Principal Subordinate Judge, Salem to consider the said application afresh on merits, after issuing notice to the respondents and petitioner and pass orders in accordance with law.

6. With the above direction, this Civil Revision petition is allowed. No costs. Connected miscellaneous petition is closed.

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Index: Yes/No
mfa/gsa

V.M.VELUMANI,J.

mfa

To

The Principal Subordinate Judge,
Salem.



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