

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.724 of 2013
& M.P.No.1 of 2013

Ramanathan

.. Petitioner

Vs.

Mahalingam

.. Respondent

PRAYER: Civil Revision Petition filed is under Section 115 of C.P.C., against the fair and decretal order dated 11.09.2012 made in I.A.No. 14 of 2012 in unnumbered A.S.No. of 2012, on the file of the Principal Subordinate Court, Salem.

For Petitioner : Mr. P.Valliappan
For Respondent : Mr. M.Vivekanandan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 11.09.2012 made in I.A.No.14 of 2012 in unnumbered A.S.No. of 2012, on the file of the Principal Subordinate Court, Salem.

2. The petitioner is plaintiff and respondent is the defendant in O.S.No.727 of 2007 on the file of the Principal District Munsif Court, Salem, for recovery of money from the respondent. The said suit was decreed on 10.04.2008. Against the said judgment and decree dated 10.04.2008, the respondent filed an appeal along with I.A.No.14 of 2012 to condone the delay of 1362 days in filing the appeal.

3. According to the respondent, he is an aged person and he is suffering from ailments like blood pressure etc. He is carrying on business at Udupi, Karnataka State and he was unable to travel and could not meet his Advocate to get the judgment and decree and file the appeal in time.

4. The petitioner filed counter affidavit and denied all the averments made by the respondent. The petitioner submitted that the respondent is active and his native place is in Mettur Taluk and he used to travel to Udupi, Karnataka State, for doing silver business. The respondent and his wife filed O.S.No.55 of 2011 before the District Munsif Court, Mettur, to take vengeance against the petitioner. The respondent had full knowledge of the judgment

and decree passed in O.S.No.727 of 2007 and he has not given any sufficient and valid reason for the huge delay of 1362 days in filing the appeal.

5. The learned Judge, considering the averments made in the affidavit, counter affidavit and materials available on record, allowed the application on payment of costs of Rs.2,000/-.

6. Against the said order dated 11.09.2012 made in I.A.No. 14 of 2012, the present Civil Revision Petition is filed by the petitioner.

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

8. From the materials available on records, it is seen that the petitioner obtained the judgment and decree in O.S.No.727 of 2007, dated 10.04.2008. The respondent was aware of the said decree and filed application for getting copies of judgment and decree. According to the respondent, he is residing in Udupi, Karnataka State and due to his old age and ailment, he could not travel and

obtain the copy of the judgment and decree and to instruct his advocate to file the appeal in time. The respondent and his wife filed O.S.No.55 of 2011 before the District Munsif Court, Mettur, on 09.03.2011 against the petitioner.

9. The contention of the learned counsel for the petitioner that the respondent is residing in Mettur and he used to travel to Udupi, Karnataka State and other places for doing silver business, is not denied by the respondent. In the counter affidavit filed in the present application and written statement filed by the petitioner in O.S.No.55 of 2011, he has mentioned about the judgment and decree passed in O.S.No.727 of 2007. In the circumstances, the delay due to his old age and ailment is not acceptable and the reason given by the respondent is not sufficient and valid reason.

10. 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.

11. In the present case, the intention of the respondent is only to drag on the proceedings and is not bonafide. The learned Judge has not given any sufficient and valid reason for condoning the delay. The learned Judge has failed to consider that the respondent has not furnished any details as to when he obtained judgment and decree and when he instructed his advocate to file the appeal. O.S.No.55 of 2011 was filed by the respondent and his wife before the District Munsif Court, Mettur, on 09.03.2011. The failure on the part of the learned Judge to consider the above facts and allowing I.A.No. 14 of 2012 to condone the delay of 1362 days in filing the appeal, is not proper and the learned Judge has committed irregularity. In view of the irregularity committed by the learned Judge, order dated 11.09.2012 is liable to be set aside and it is hereby set aside.

12. In the result, the present Civil Revision Petition is allowed by setting aside the order dated 11.09.2012 made in I.A.No.14 of 2012. No costs. Consequently, connected miscellaneous petition is closed.

10.10.2017

Index : Yes/No

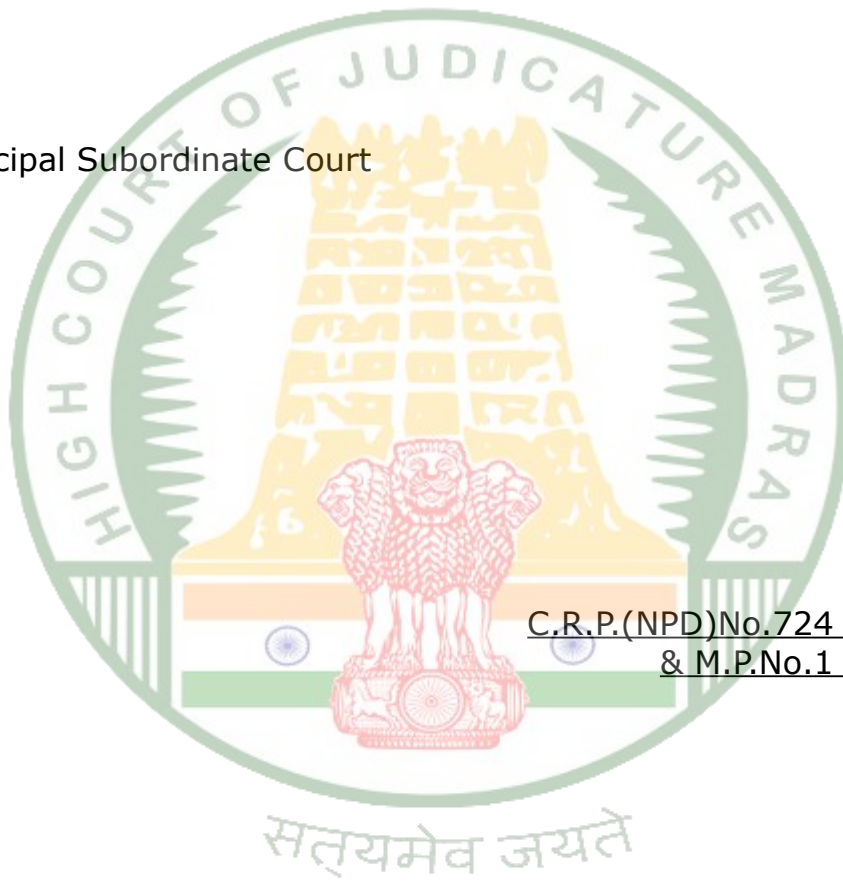
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V.M.VELUMANI, J.

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To

The Principal Subordinate Court
Salem.



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