

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.11.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD)No.209 of 2008

Natrajan son of Sellakutti
Kodiyaalam Village,
Vandavasi Taluk,
Vellore District.

... Petitioner/plaintiff

/vs/

1. Balasundaram son of Sellkutti
2. Paramasivam Son of Sellakutti
3. Gnanasekaran son of Sellakutti
4. Adhiammal wife of Kishtan
5. Indira wife of Natrajan
(All the respondents are at
Emambalam village, Vandavasi
Taluk)

... Respondents /
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order in I.A.214/2007 in O.S.153/2003, on the file of the learned Additional District Munsif, Vandavasi, dated 30.07.2007.

For Petitioner : Ms.Sahana for Mr.V.Raghavachari

For Respondent : Not ready in notice for R1 to R3
No appearance for R4
Mr.K.R.N.Balamurugan for R5.

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ORDER

The above Civil Revision Petition is filed challenging the order of the learned Additional District Munsif, Vandavasi, in

I.A.No.214 of 2007 in O.S.No. 153 of 2003, wherein the learned Additional District Munsif Judge, has dismissed the application filed by the revision petitioner/plaintiff to condone the delay of 174 days in filing the petition for restoring the suit, which has been dismissed for default.

2. The revision petitioner had filed the suit for declaration that the suit property belongs to both himself and the respondents 1 to 3 herein and for a direction to the fourth respondent to handover the possession to the revision petitioner and respondents 1 to 3 herein. It appears that when the suit was listed for hearing on 16.06.2006, the revision petitioner/plaintiff was not present and therefore, the suit was dismissed for default. The plaintiff has come forward with an application to restore the suit with an application to condone the delay of 714 days and in the affidavit filed in support of the said petition, the revision petitioner would contend that he had stayed in his daughter's house in Chennai and that since he was unwell, he was not able to contact his advocate and therefore, he was not aware of the status of the suit. It was his further case that after his return to his native, when he has contacted his advocate, he was informed that the suit was dismissed for default and that an application should be filed to restore the suit. He was also informed that there is a delay of 714 days in filing the restoration petition. Therefore the petitioner filed

a petition to condone the delay of 174 days in filing the restoration application.

3. The sixth respondent filed a counter inter-alia contending that the affidavit filed in support of the petition seeking condonation of delay is bereft of details as to when the revision petitioner had gone to Chennai, the date on which he was back to his native and the date on which his advocate had informed him about the dismissal of the suit for default etc., and therefore, the application lacks material particulars and the same has to be dismissed. The learned District Munsif dismissed the above application on the ground that the reason given by the revision petitioner/plaintiff is not true and each and every days delay, has not been properly explained. This order is the subject matter of challenge in the present revision.

4. Heard. Ms.Sahaana, learned counsel appearing for Mr.V.Raghavachari. She would argue that the revision petitioner/plaintiff has a valid case in the suit and the dismissal had occurred only on account of the fact that the petitioner had come to Chennai and had to remain in Chennai because of his ill-health. The order of the learned District Munsif in dismissing the application is on a very hyper-technical ground and the same is liable to be set aside.

5. Though the respondents are represented by the learned counsel, none appeared. When the matter was called before this court the case was passed over for the appearance of the counsel for the respondents once again when the matter was called, there was no representation. Considering the very short issue, this Court proceeded to pass order after hearing the counsel for the petitioner.

6. The affidavit filed in support of the application clearly narrates that the revision petitioner had gone to Chennai, and when he was in Chennai, he was suffering from Asthma and that he was unable to contact his advocate and therefore, did not have the knowledge about the dismissal of the suit. It is also to be taken note that the once the revision petitioner returned back to his village, he immediately contacted his counsel, which shows his diligence in prosecuting the case.

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7. The learned District Munsif ought not to have taken such a hyper-technical view and ought to have taken a liberal view while approaching the issue on hand. Time and again, this Court as well as the Hon'ble Supreme Court, in catena of decisions, has held that a liberal approach is to be taken while dealing with the petitions to condone the delay and Court should not take a pedantic view.

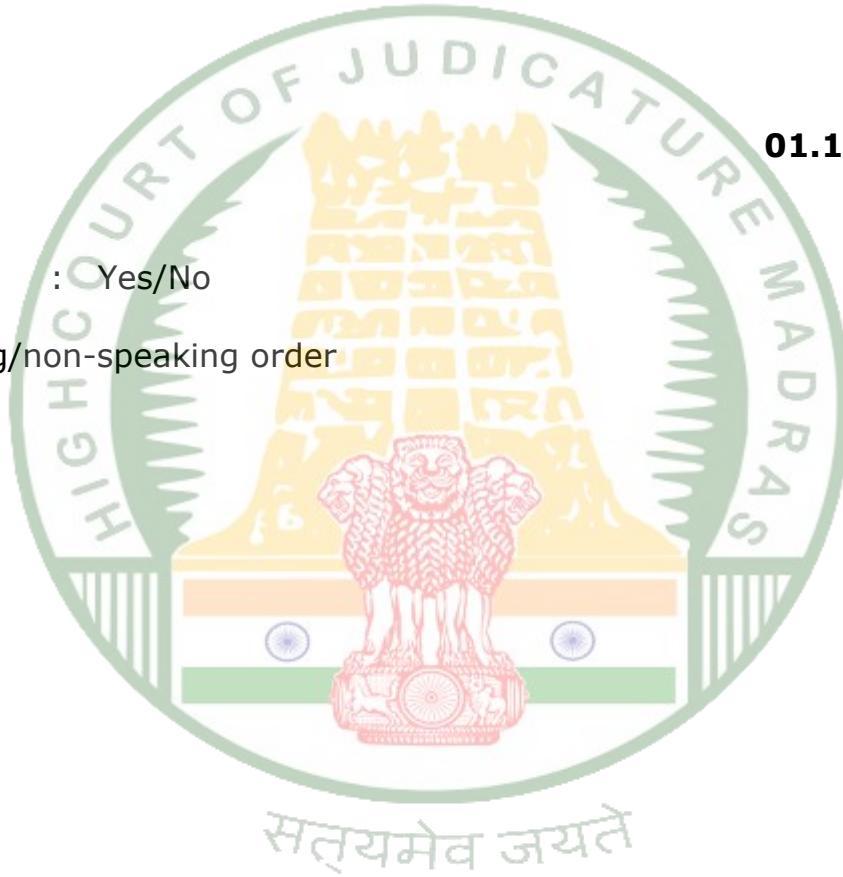
8. In the result, the order passed by the learned District Musif Judge, Vandavasi in I.A.214/2007 in O.S.153/2003 is set aside and this Civil Revision petition is allowed. There shall be no order as to cost.

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Index : Yes/No

Speaking/non-speaking order

jrs/ssi



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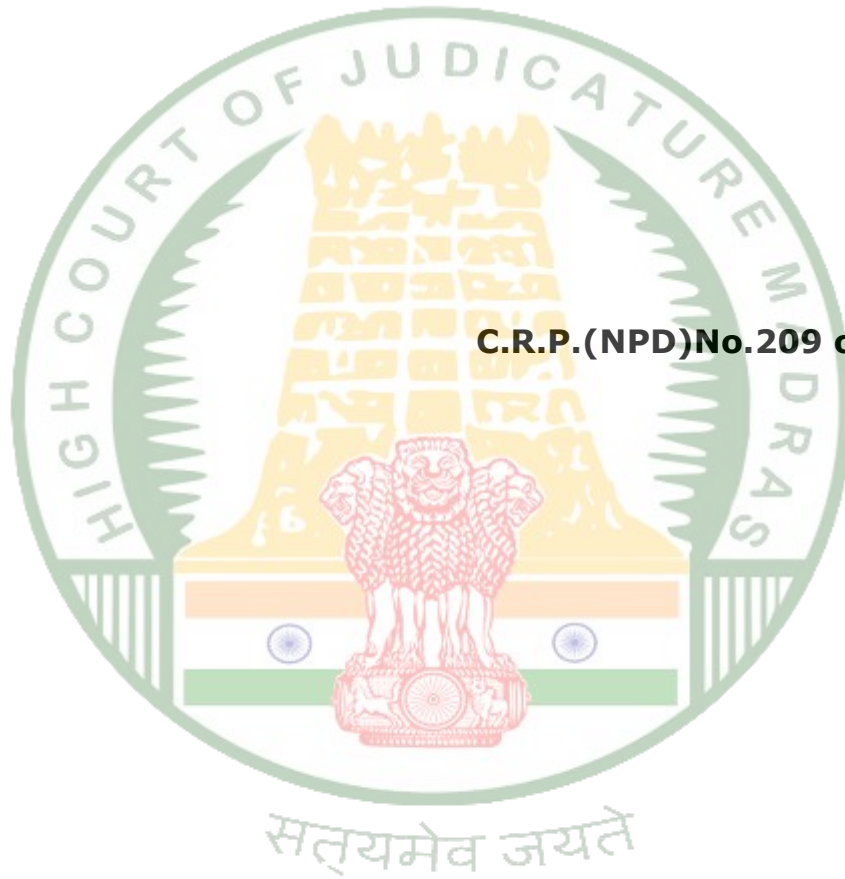
The Learned District Munsif Court,
Vandavasi.



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P.T. ASHA J.,

jrs/ssi



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