

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.06.2018

CORAM

The Hon'ble Mr.Justice **P.VELMURUGAN**

C.M.P.No.9435 of 2018

and

C.R.P.(NPD) SR.No.50029 of 2016

C.Mathialagan .. Petitioner

vs.

K.K.Thiyagarajan .. Respondent

Prayer in C.M.P.No.9435 of 2018: The Civil Miscellaneous Petition has been filed under Section 151 of CPC to condone the delay of 566 days in representing the main civil revision petition in SR No.50029 of 2016 on the file of this Court.

Prayer in CRP(PD) SR.No.9435 of 2018: The Civil Revision Petition (NPD) SR has been filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 22.06.2016 passed in I.A.No.423 of 2010 in O.S.No.1419 of 1998 by the learned Principal Subordinate Judge, Coimbatore.

For Petitioner

... Mr.A.Mohamed Ismail

ORDER

The Civil Miscellaneous Petition has been filed to condone the delay of 566 days in representing the main civil revision petition in SR No.50029 of 2016 on the file of this Court.

The Civil Revision Petition (NPD) SR has been filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 22.06.2016 passed in I.A.No.423 of 2010 in O.S.No.1419 of 1998 by the learned Principal Subordinate Judge, Coimbatore.

2. The petitioner herein is the defendant and the respondent herein is the plaintiff.

3. The brief facts of the case are as follows:

The respondent/plaintiff filed a suit in O.S.No.1419 of 1998 against the petitioner/defendant on the file of the Sub Court, Coimbatore seeking a direction to execute a registered sale deed in respect of the suit property in favour of the plaintiff or the nominee, after receiving the balance sale consideration of Rs.25,000/- on or before a date to be fixed by the Court. To contest the suit, the petitioner/defendant also filed written statement. The said suit was decreed ex parte on 28.09.2001. Due to the inordinate circumstances,

a delay was occurred in filing an application to set aside the exparte decree dated 28.09.2001 passed in O.S.No.1419 of 1998. Hence, the petitioner/defendant filed an application in I.A.No.423 of 2010 under Section 5 of the Limitation Act to condone the delay of 3075 days in filing an application to set aside the exparte order dated 28.09.2001 in O.S.No.1419 of 1998. The trial Court dismissed the said application by order dated 22.06.2016. Feeling aggrieved by the said order, the petitioner filed the present civil miscellaneous petition along C.R.P.(NPD) SR.No.50029 of 2016.

4.The learned counsel for the petitioner submitted that the petitioner has not received any notice about the stage of the suit. During the suit proceedings, the petitioner was suffering from heart ailment and jaundice, due to which, he has lost his memory. As per the advice of the Doctor, the petitioner was taking continuous treatment in the hospital and hence, he has not received any intimation from his counsel. The petitioner came to know the fact that an exparte decree was passed against him only on 16.02.2010, when he was in Mumbai. In such circumstances, a delay of 3075 days has been caused in filing an application to set aside the exparte order dated 28.09.2001 passed in O.S.No.1419 of 1998. Hence, the delay

of 3075 days is neither wilful nor wanton. Therefore, the impugned order passed by the trial Court is liable to be set aside.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. On a perusal of records it is seen that the petitioner was suffering from severe heart ailment and jaundice and he was not in a position to move anywhere as he was taking continuous treatment in the hospital. Hence, a delay of 3075 days has occurred in filing the petition to set aside the exparte decree. To prove the fact that the petitioner was suffering from heart ailment and other disease, he has not placed any medical documents before the trial Court and he has not stated any sufficient reasons to condone the delay of 3075 days.

7. It is well settled law that the petitioner has to explain each and every day's delay.

8. No doubt, there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation of delay.

9.The delay is not proportionate with reason given in the affidavit and the length of the delay is not the matter. What Counts is not the length of the delay but sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. Moreover, the reasons stated by the petitioner is not sufficient to condone the delay of 3075 days in filing the application to set aside the exparte decree and even assuming the fact is true but at least he should have followed the case through somebody. Therefore there is no merit in the Civil Revision Petition. There is no illegality or infirmity in the order passed by the Court below warranting interference.

In the result, the civil miscellaneous Petition is dismissed. No costs. Consequently, connected CRP(NPD) SR.No. 50029 of 2018 is rejected.

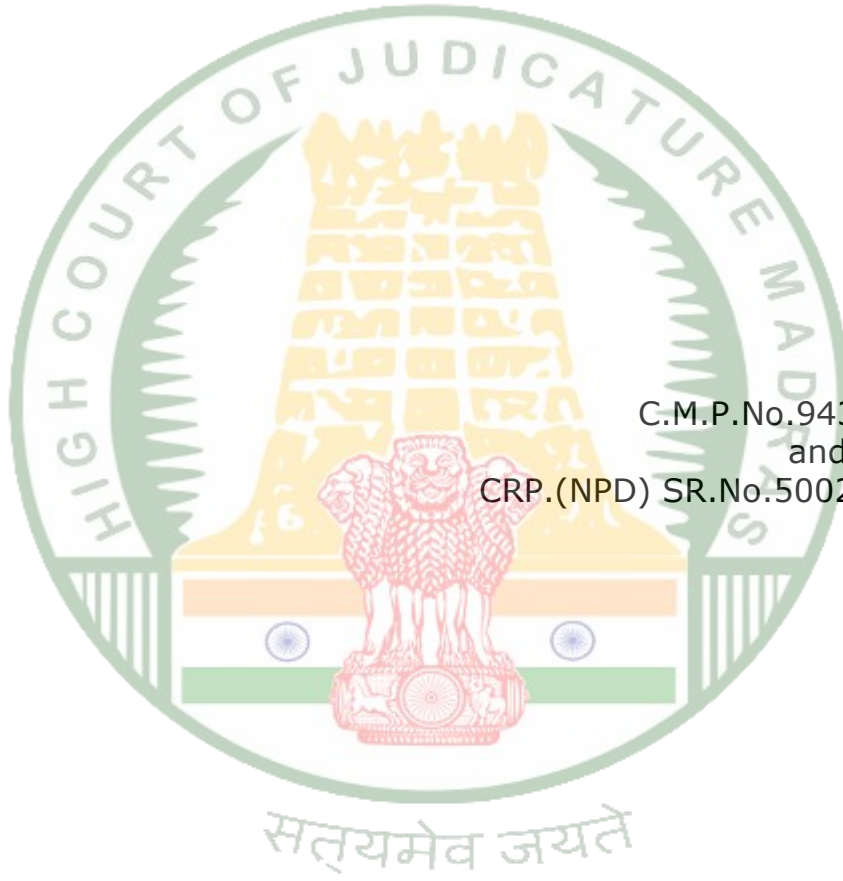
12.06.2018

Index:Yes/No
Speaking Order:Yes/No

cla
To
The Principal Subordinate Judge,
Coimbatore.

P.VELMURUGAN.J,

cla



C.M.P.No.9435 of 2018
and
CRP.(NPD) SR.No.50029 of 2016

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