

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2018

C O R A M

THE HON'BLE MR.JUSTICE M.S.RAMESH

C.R.P.[NPD] No.1857 of 2015

K.Kaliyaperumal

.. Petitioner

Vs

1.K.Abdul Salam Rowther

2.Indian Oil Corporation Ltd.,

Rep. by Chief Divisional Retail Sales, Manager,
Chennai Division, Chennai-18.

3.Indian Oil Corporation Ltd.,

Rep. by Senior Divisional Retail
Sales Manager,
Trichy Divisional Office, Trichy.

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, praying to set aside the Fair and Decreetal Order passed on 07.07.2014 in I.A.No.1077 of 2012 in O.S.No.280 of 2007 on the file of the Additional District Munsif, Villupuram.

For Petitioner : Mr.L.Prabakar

For Respondents : Mr.Mohammed Fayaz Ali, for RR 2 & 3

ORDER

The order under challenge in the present Civil Revision Petition is the rejection of the petitioner's application to condone the delay of 747 days in filing the application to restore the suit in O.S.No.280 of 2007. The reason

assigned in the application seeking for condonation of delay is medical ailment for the delay and in support of the same, the petitioner herein had also produced medical certificates. However, the Court below had rejected the petitioner's request, as against which the present revision petition has been filed.

2.The learned counsel for the petitioner submits that the suit has been filed for the relief of declaration to declare the registered lease agreement entered into between the plaintiff and the first defendant is not terminated and for consequential injunction. According to the petitioner, he has valid grounds to sustain the relief sought for. It is submitted that there was no malafide intention in having allowed the suit to be dismissed for default and the consequent delay in filing the application to restore the suit. As such, the learned counsel would submit that a lenient view may be taken for the purpose of condoning the delay.

3.The learned counsel for the respondents 2 and 3 on the other hand submitted that it is established law that each and every day's delay requires to be explained and such proposition has already been well settled by the Hon'ble Apex Court as well as various High Courts. In the instant case, the delay has not been explained for each and every day and though various opportunities were given to petitioner for his appearance, he has not

chosen to appear before the Trial Court and there was also no proper reasoning assigned in the application and as such the Trial Court was justified in rejecting the petitioner's application.

4. The learned counsel for the respondents 2 and 3 also submits that the medical certificates filed in support of the application filed under Section 5 of the Limitation Act relates only to three months period and as such, the reasons assigned in the application were also not justified. With these submissions, the learned counsel sought for dismissal of the Civil Revision Petition.

5. I have given careful consideration to the submissions made by the respective counsels.

6. The Trial Court by relying upon the judgment of this Court reported in **2010 (1) MLJ 1092 (Vellaithai and others vs. V.Duraisami)** and also taking into account the conduct of the petitioner herein had rejected the application for condonation of delay. It is no doubt true that the medical certificates appended to the condone delay application relates to a period of three months alone and there are no other supporting documents for the rest of the period of delay. Nevertheless, the affidavit filed in support of the application goes to state that he had been

continuously under medical ailment and owing to such ailment, he was unable to file the restoration petition in time. All those documents are required to be looked into. For the purpose of the present revision, it has to be seen as to whether there was any deliberate in action or gross negligence on the part of the petitioner herein in having failed to file the condone delay application, in time.

7. At this juncture, the learned counsel for the petitioner was also called upon to present his case, as evidenced in the plaint in order to ascertain as to whether there are any prima facie merits or arguable points in the suit.

8. According to the learned counsel for the petitioner, the petitioner herein has entered into a registered lease agreement with the first respondent herein. When the lease agreement was in force, the first respondent had terminated the lease agreement and entered into another lease agreement with the second respondent. According to the learned counsel for the petitioner, the termination is in valid, since he has paid considerable amount towards the lease agreement, which is the subject matter of the suit. As such, the learned counsel submits that he has triable issues and arguable points in the suit. Hence, there was neither malafide intention nor any deliberate in action on the part of the petitioner in having

allowed the suit to be dismissed for default and consequent delay in filing the restoration application. Though the delay has not been properly and satisfactorily explained, the condone delay application carries certain explanation with regard to the entire delay.

9. Nevertheless, in view of the fact that the pleadings reveal that the plaintiff is having certain arguable and triable issues, it is the view of this Court that the petitioner could be given one more opportunity for the purpose of enabling him to contest the suit. However, by allowing this revision, some prejudice would be caused to the respondents, who have been dragged to defend the revision before this Court. In these circumstances, it would be appropriate to put the petitioner on certain terms.

10. In the light of the above observations, the order passed by the Additional District Munsif, Villupuram in I.A.No.1077 of 2012 dated 07.07.2014, is set aside and consequently the delay of 747 days is condoned and the suit in O.S.No.280 of 2007 is restored to file, on condition, that the petitioner herein / plaintiff shall deposit a sum of Rs.30,000/- (Rupees thirty thousand only) on the account of the Tamilnadu Juvenile Justice Fund, Ministry of Social Defence, Old No.153, New No.30, Pursawalkam High Road, Kellys, Chennai - 600010 [A/c.No.358001000000671, Indian Overseas

Branch, Kellys Branch, Chennai - 600010]. Accordingly, the Civil Revision
Petition is allowed.

25.10.2018

Index : Yes/No
Internet : Yes/No
gsi/pvs

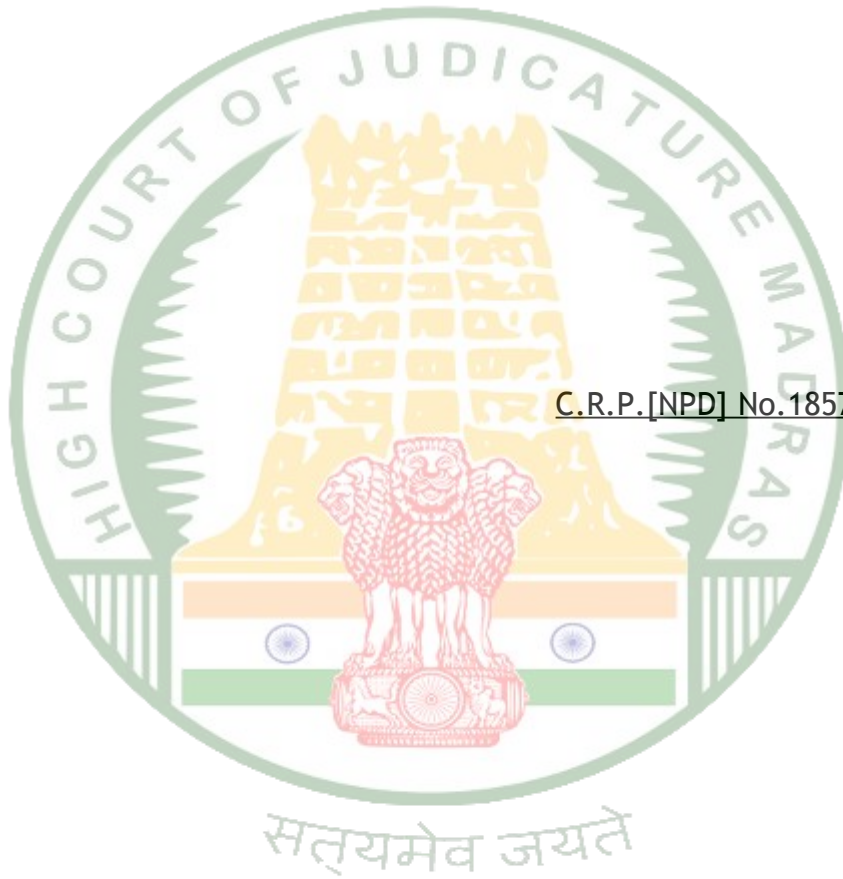
To
The Additional District Munsif, Villupuram.



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M.S.RAMESH, J.

pvs



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