

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

C.R.P. (NPD) No. 2719 of 2015

and

M.P. No. 1 of 2015

R.Raghupathi

...Petitioner

Vs

1. S.Selvam

2. Santhakumar

3. The Sub Registrar,
Redhills, Ponneri Taluk.

...Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decretal order dated 23.04.2015 made in I.A.No.41 of 2015 in O.S.No.105 of 2011 on the file of the learned III Additional District Judge, Thiruvallur at Poonamallee.

For Petitioner

: Mr.M.Velmurugan

For Respondents

: Mr.Ashok Menon for R1

No Appearance for R2 and R3

ORDER

The only reason assigned in the application filed before the trial Court seeking to condone the delay of 515 days to set aside the ex-parte decree is that, the petitioner herein was undergoing medical ailment of chronic cardiac disease. The trial Court has disbelieved the statement of the petitioner that there were no medical records produced along with application and as such, rejected the application, which is under challenge in the present revision petition.

2. The learned counsel for the petitioner submitted that the petitioner herein was a heart patient, who had been undergoing treatment on various days in connection with the medical ailment. The learned counsel would submit that though they were not in possession of the medical records before the trial Court, they have produced the same before this Court, which evidences that the petitioner has undergone medical treatment for his cardiac disease. The learned counsel would further submit that they have an arguable case before the trial Court and as such, they should not be rejected without going for trial and that they are willing to file the written statement immediately.

3. The learned counsel for the 1st respondent on the other hand, objected the submissions and stated that the delay of 515 days is inordinate in nature. By relying upon the affidavit filed by the petitioner in support of the application, to condone the delay, the learned counsel submits that each and every days delay was not properly explained and the medical ailment is not supported by any document. As such, the learned counsel would submit that there was no error in the findings of the trial Court.

4. I have given careful consideration for the submissions made by the respective counsels.

5. It is no doubt true that the petitioner herein had not produced any records to show that he was undergoing medical treatment with regard to his cardiac disease and as such, the trial Court may not be at error in giving such a finding. Nevertheless, such medical records have now been produced before this Court, which evidences that the petitioner had been undergoing medical treatment for a considerable time. Had these medical records been produced before the trial Court, there is a possibility that the delay could have been condoned. However, since it has been produced belatedly before this Court, I am of the view that the same could be considered at this stage. This

Court also takes note of the prejudice that would have been caused to the respondents and as such, by imposing an exemplary cost in the present revision, the ends of justice could be secured.

6. In the light of the above observations, the order dated 23.04.2015 in I.A.No.41 of 2015 in O.S.No.105 of 2011 is set aside. The petitioner is also directed to pay a sum of Rs.10,000/- as exemplary cost to the respondents and file such proof of payment, before the trial Court, within a period of two weeks from the date of receipt of copy of this order.

7. Accordingly, the Civil Revision Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

05.12.2018

Index:Yes/No

Speaking order: Yes/No

hvk

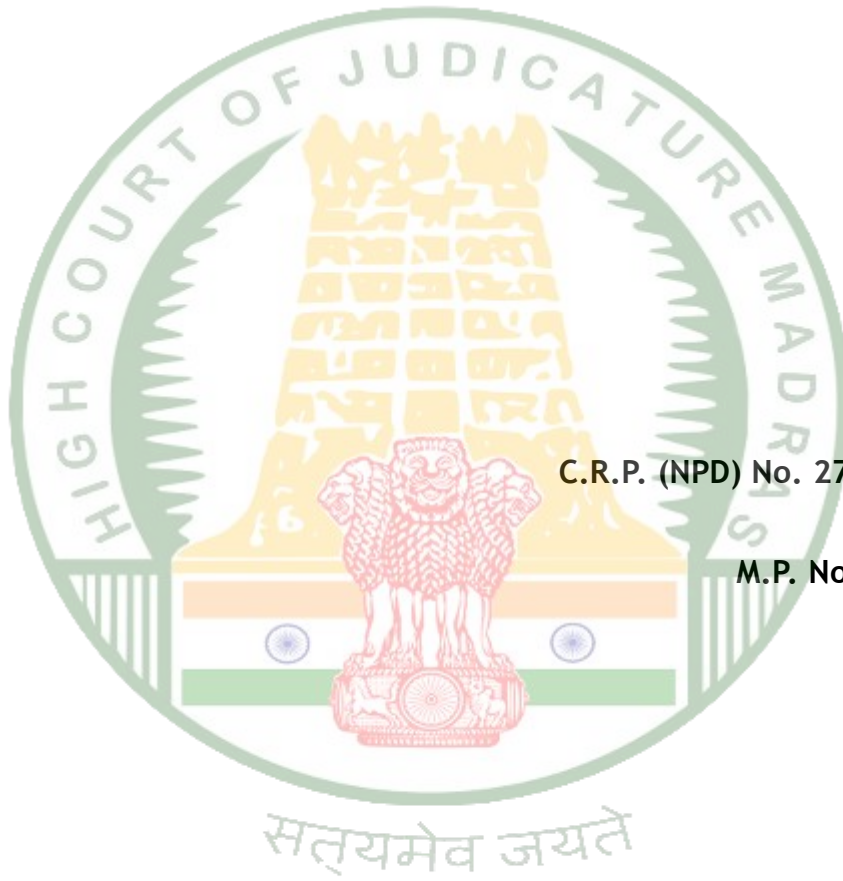
To

The III Additional District Judge,
Thiruvallur.

WEB COPY

M.S.RAMESH.,J

hvk



C.R.P. (NPD) No. 2719 of 2015
and
M.P. No. 1 of 2015

WEB COPY

05.12.2018