

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP(NPD).No.165 of 2018

and

CMP.No.953 of 2018

S.Madana Gopal

.. Petitioner

Vs

1.P.Jayapal

2.R.Gurunathan

3.M.Sukumar

.. Respondents

PRAYER

Civil Revision Petition is filed under Section 115 of the Civil Procedure Code to set aside the fair and final order dated 26.10.2017 in IA.No.1003 of 2017 in OS.No.221 of 2010, passed by the District Munsif Court, Thiruvallur and consequently dismiss the same together with costs through out.

For Petitioner : Mr.K.Venkatesan

For Respondents : Mr.K.Balaji for R1

ORDER

According to the revision petitioner, the revision petitioner has filed a suit in OS.No.221 of 2010 before the District Munsif Court, Tiruvallur for declaration and mandatory injunction. The respondents have filed written statement on 19.06.2017. Thereafter, the respondents were set ex-parte and ex-parte decree was passed. The respondents have filed an application in IA.No.1003 of 2017 to condone the delay of 387 days in filing an application to set aside the ex-parte decree dated 27.04.2016. The court below, without considering the objection of the revision petitioner, has allowed the application on payment of cost. Challenging the aforesaid order, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioner would submit that the court has observed that the respondents herein have not satisfied the court for condoning the delay of 387 days. However, in the interest of justice and also by considering the nature of the relief as sought for in the prayer, the aforesaid application was allowed. Further, the court has failed to consider the decision of the Hon'ble Supreme Court in the case of *Balwant Singh Vs. Jagdish Singh & Others* reported in **CDJ 2010 SC 575**, wherein it has been held that

"proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5 of the Limitation Act" and in the present application there is no sufficient cause has been shown by the respondents. Hence, the order of the court below is liable to be set aside.

3. The learned counsel for the first respondent would submit that the respondents have stated sufficient reasons by stating that the first respondent is the only person conducting the suit on behalf of the other respondents and after filing vakalat, his earlier counsel informed that he will inform the first respondent about the status of the case. Being an agriculturist / cooli, the first respondent went to Andhra Pradesh for agriculture labour work. He was unable to contact the counsel at the time. There was no communication between the first respondent and the counsel and after returning from Andhra Pradesh, in the month of May 2016, he was suffering from jaundice and the doctors advised him to take rest and not to move out of the bed. After that, the first respondent went to Assam and stayed with his son for six months and unable to contact the counsel. Thereafter, he came to know after receiving notice in the execution petition and immediately contacted the present counsel and filed the

present application before the court below. The court below has rightly allowed the application on payment of cost of Rs.1,000/-. Hence, the Civil Revision Petition is liable to be dismissed.

4. In view of the above said facts and the submissions made by the learned counsel for the parties and on perusal of the materials on records.

5. The respondents herein filed an application in IA.No.1003 of 2017 in the aforesaid suit to condone the delay of 387 days in filing an application to set aside the ex-parte decree. The revision petitioner has filed objection to allow the application stating that there is no sufficient reason. The court below has erroneously allowed the said application. By considering the contentions of the respondents and considering the reasons stated in the affidavit and the relief as sought for in the suit, the court below has allowed the application for giving an opportunity to the respondents to put forth their contentions on merits in the aforesaid suit.

6. The learned counsel for the revision petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of

Balwant Singh Vs. Jagdish Singh & Others reported in **CDJ 2010 SC 575**. But, as far as the facts of the case, the respondent filed an application for condoning 778 days delay in filing an application to set aside the ex-parte decree. But the present case on hand, the respondents have stated that he was not in the place and he went to other state for doing agriculture work. Due to communication gap, the respondents were not in a position to contact the counsel. In the case of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors., reported in (2013) 12 SCC 649**, the Hon'ble Supreme Court has observed that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

7. Further, this Court considers that the suit has been filed by the revision petitioner for declaration and mandatory injunction against the respondents and the same has to be adjudicated on merits by providing an opportunity to both the parties. In the light of the decision of the Hon'ble Supreme Court and decisions of this Court, there is no warrants to interfere with the order passed by the court

below. But, however, the inordinate delay in filing the application shall be compensated by imposing heavy cost on the respondents.

8. Hence, the order of the court below is modified to the effect that the respondents shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) towards cost to the revision petitioner through the counsel for the revision petitioner, within the period of two weeks.

9. In the event of the respondents have complied with the conditional order, on instructions, both the parties requested to dispose of the suit as expeditiously within the time as may be fixed by this Court.

10. Hence, on the request of both the parties, this Court is inclined to direct the District Munsif Court, Thiruvallur to dispose of the suit in OS.No.221 of 2010 within the period of six months from the date of receipt of a copy of this Order.

WEB COPY

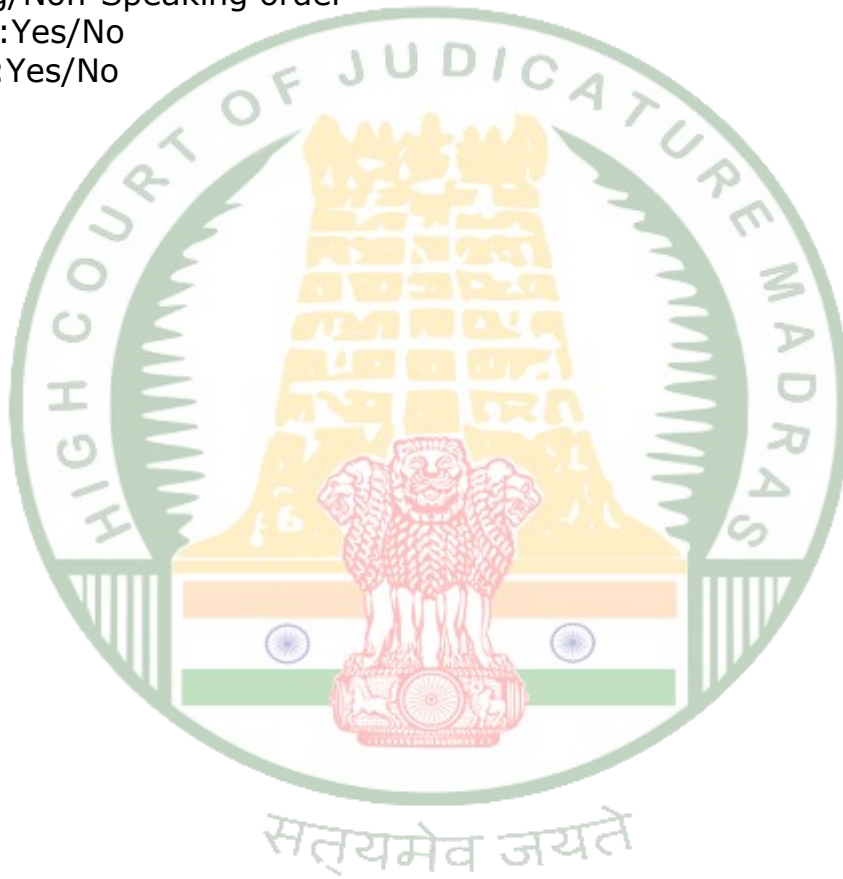
11. Thus, the Civil Revision Petition is partly allowed.

Consequently, connected miscellaneous petition is closed. No costs.

12. For reporting compliance, post the Civil Revision
Petition on 06.02.2018.

23.01.2018

Speaking/Non-Speaking order
Index :Yes/No
Internet:Yes/No
lok



WEB COPY

D. KRISHNAKUMAR J.,

lok

To

The District Munsif Court,
Thiruvallur



CRP(NPD).No.165 of 2018
and CMP.No.953 of 2018

WEB COPY

23.01.2018