

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRP.NPD.No.1433 of 2018

1.Sudha
2.Revathy

... Petitioners

Vs

1.Rajendran
2.Jayanthi
3.Thiyagu

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the fair and decretal order dated 27.10.2017 made in I.A.No.1038 of 2017 in O.S.No.118 of 2013 on the file of the Additional District Munsif, Villupuram.

For Petitioner : Mr.R.Babu

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 27.10.2017 passed in I.A.No.1038 of 2017 in O.S.No.118 of 2013 on the file of the Additional District Munsif, Villupuram.

2. The plaintiffs in O.S.No.118 of 2013 on the file of the Additional District Munsif Court, Villupuram, are the revision petitioners herein.

3. According to the petitioners, the petitioners herein have filed the suit in O.S.No.118 of 2013 seeking partition and permanent injunction. Subsequently, the said suit was dismissed for default on 05.01.2017. Thereafter, the petitioners have filed an application in I.A.No.1038 of 2017 to restore the suit along with a petition to condone the delay of 61 days. After hearing the arguments of both sides, the trial Court has dismissed the said application. Feeling aggrieved by the said order, the petitioner has filed the present civil revision petition before this Court.

4. The learned counsel for the petitioners would contend that the first petitioner has filed an affidavit in support of the petition, wherein it is stated that the petitioners were not well and she could not contact their advocate and hence, she could not attend the Court on the date of hearing. Therefore, the suit was dismissed for default. Further, he would contend that the respondents have no objection for allowing the application. Despite the fact that the trial court has not considered the no objection given by the respondents, the same was dismissed on the ground that the petitioners had not established their illness by way of producing the medical certificate or by way of examining the Medical Officer for proving the illness.

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

6. On a reading of the affidavit filed by the petitioners before the trial Court in I.A.No.1038 of 2017, it is seen that the petitioners have not given any reason for condoning the delay of 61 days in filing application to restore the suit and there is no document has been filed before the trial Court. Hence, the trial Court has rightly dismissed the application. In the interest of justice, since the suit between the brothers and sisters for partition, this Court is inclined to allow the application with the terms of cost.

7. Considering facts and circumstances of this case, this Court is inclined to pass the following orders:

i) The impugned order passed by the learned Principal District Munsif, Villupuram in I.A.No.1038 of 2017 dated 27.10.2017 is hereby set aside.

ii) the petitioners are directed to pay a sum of Rs.5,000/- to the respondents on or before 05.06.2018.

iii) On production of memo for payment of cost, the learned Principal District Munsif, Villupuram is directed to restore the suit and dispose of the same, in accordance with law as early as possible, preferably within six months from the date of receipt of a copy of this order.

P.VELMURUGAN,J.

kkd

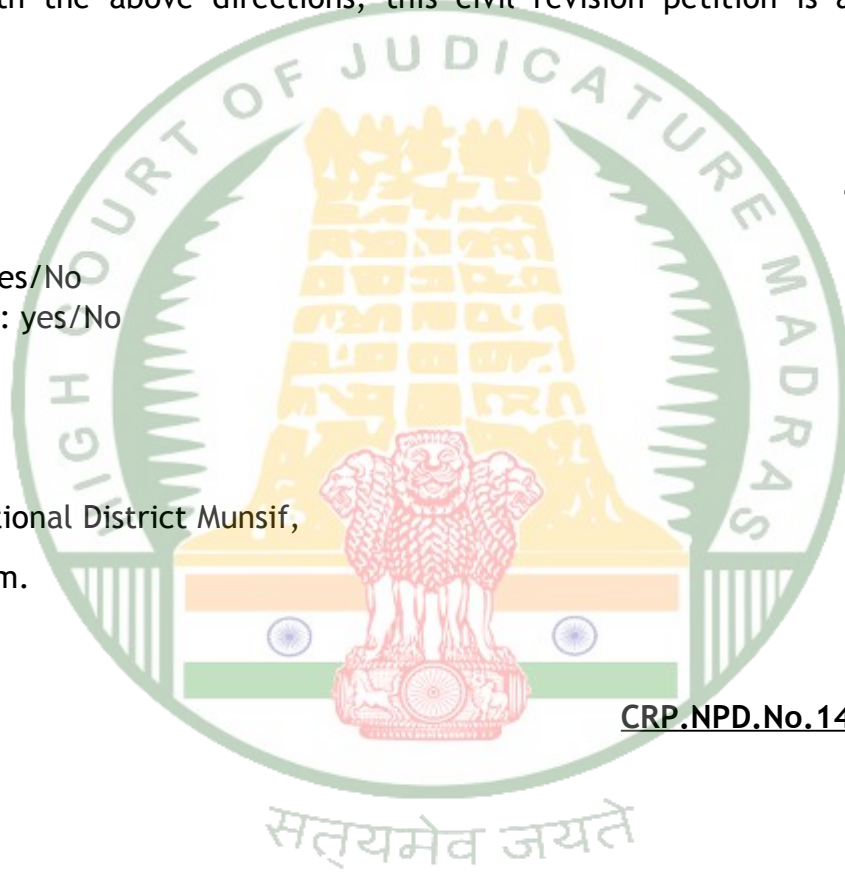
With the above directions, this civil revision petition is allowed. No costs.

19.04.2018

Index : yes/No
Internet : yes/No
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To

The Additional District Munsif,
Villupuram.



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