

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.06.2018

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

C.R.P.(NPD)No.4331 of 2017 and
C.M.P.No.20382 of 2017

Prabhuram

... Petitioner

Vs.

1. Saraswathi
 2. Prabha

... Respondents

Civil Revision Petition has been filed under Article 227 of the Constitution of India against the order dated 20.07.2017 passed in I.A.No.68 of 2017 filed in A.S.CFR.No.634 of 2015 by the learned Principal District Judge, Coimbatore.

For Petitioner : Mr.Vegnesh Karthick
 For Respondents : Mr.Saravanan for R1
 Mr.N.Chinnaraj for R2

ORDER

This civil revision petition has been filed against the order dated 20.07.2017 passed in I.A.No.68 of 2017 filed in A.S.CFR.No.634 of 2015 by the learned Principal District Judge, Coimbatore.

2 The petitioner is 1st defendant, 1st respondent is plaintiff and 2nd respondent is 2nd defendant in the suit in O.S.No.154 of 2011 which was filed for the relief of partition and declaration. After trial, the

suit was dismissed in respect of the claim made by the first respondent/plaintiff and came to be decreed in favour of the defendants stating that the petitioner/1st defendant is entitled for 2/3rd share and 2nd respondent/2nd defendant is entitled for 1/3rd share in the suit property. Aggrieved against the decree passed infavour of the 2nd respondent/2nd defendant, the petitioner herein preferred an appeal in A.S.No.79 of 2015, which is still pending. The first respondent/plaintiff filed an interlocutory application in I.A.No.68 of 2017 under Section 5 of the Limitation Act, seeking to condone the delay in filing appeal against the very same decree passed in O.S.No.154 of 2011. The trial Court allowed the application by an order dated 20.07.2017.

3 Aggrieved against the order dated 20.07.2017, the first defendant is before this Court with the present revision petition.

4 The learned counsel for the revision petitioner would submit that the first respondent/plaintiff had not explained the details of day to day delay in filing the appeal. The lower appellate Court erroneously allowed same without giving any valid reason. Hence the order dated 20.07.2017 is liable to be set aside.

5 The learned counsel for the first respondent/plaintiff would submit that after passing of decree, two applications came to be filed by the petitioner herein for amend the decree and to change his name in the decree. Due to the pendency of the above two applications, the first respondent/plaintiff could not file appeal in time and hence the delay has occurred.

6 Heard the learned counsel appearing on either side and perused the materials available on record.

7 On a perusal of the materials, it reveal that already A.S.No.79 of 2015 is pending against the same decree passed in O.S.No.154 of 2011, which was filed by the petitioner herein. Hence allowing the application filed by the first respondent/plaintiff seeking to condone the delay in filing appeal against the very same judgment will not cause any serious prejudice to the revision petitioner. Further condoning the delay in filing the application is discretionary power of the Court. Hence this Court does not find any arbitrariness in the order dated 20.07.2017. Under these circumstances, there is no reason to interfere with the above order.

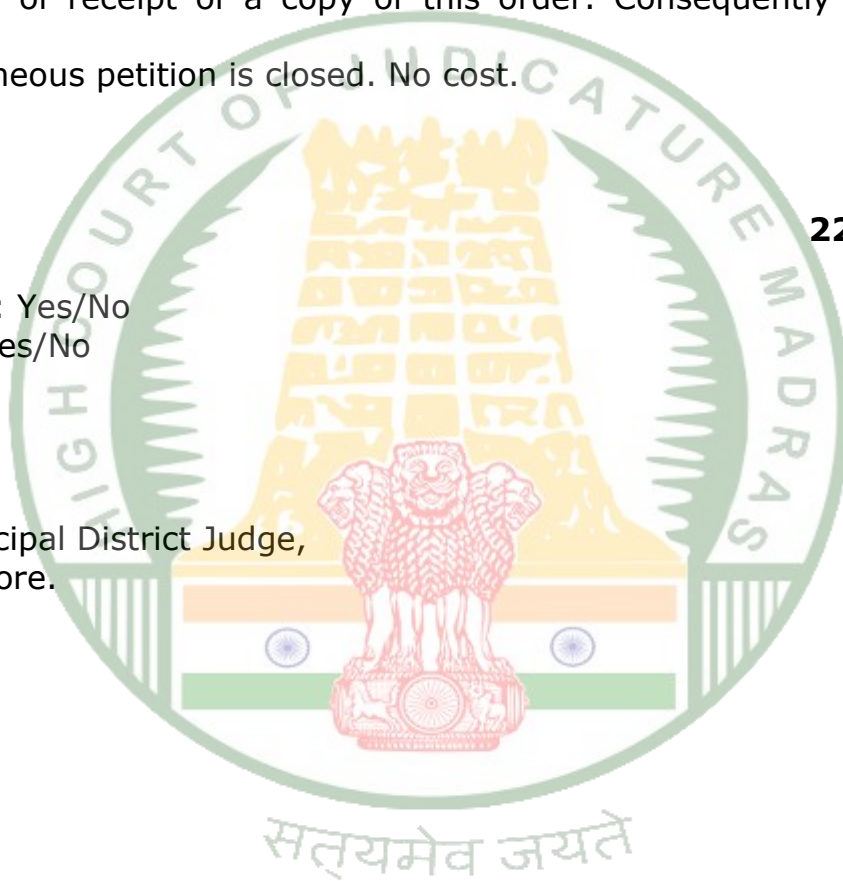
8 Accordingly, the civil revision petition is dismissed and since arguments only to be advanced in the appeal, the first appellate Court is directed to dispose of both the appeals within one month from the date of receipt of a copy of this order. Consequently connected miscellaneous petition is closed. No cost.

22.06.2018

Internet: Yes/No
Index: Yes/No

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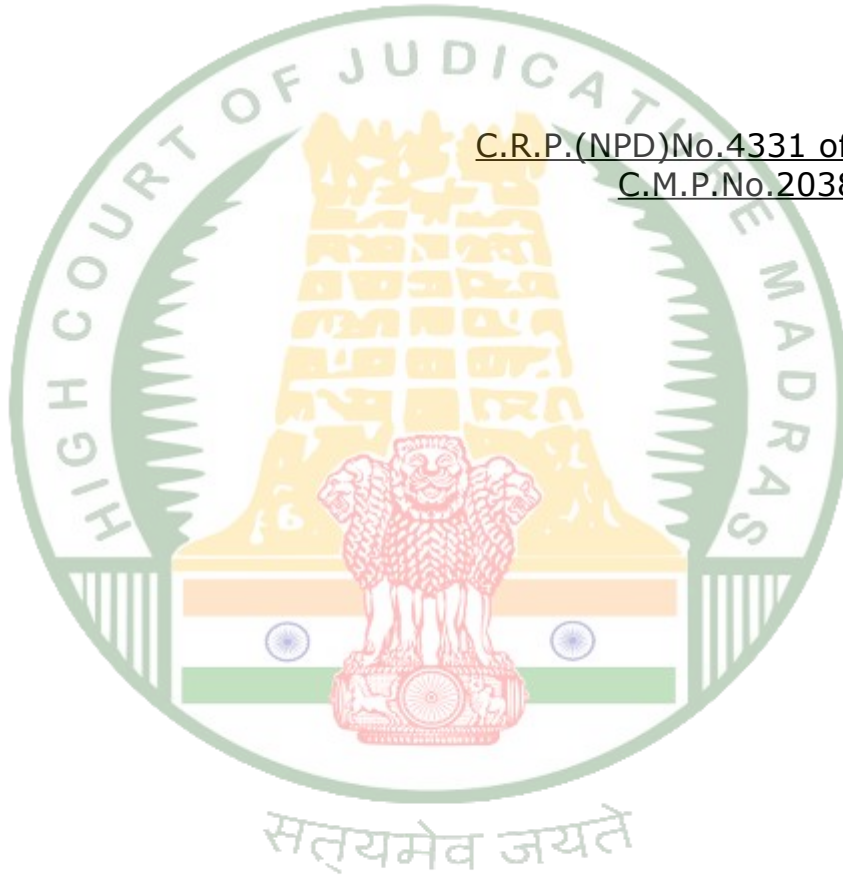
To
The Principal District Judge,
Coimbatore.



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P.VELMURUGAN, J.,

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