

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (NPD) No. 239 of 2018
and
C.M.P. No. 1387 of 2018

Arachelvam

.. Petitioner

Vs

Sundarsingh

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 27.10.2017 made in I.A. No. 613 of 2017 in O.S. No. 76 of 2013 on the file of the Additional District Munsif Court, Villupuram.

For Petitioner : Mr.D.S. Thirumavalavan

For Respondent : Mr. D. Padmanabhan

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ORDER

The revision petition is filed against the fair and decreetal order dated 27.10.2017 made in I.A. No. 613 of 2017 in O.S. No. 76 of 2013 on the file of the Additional District Munsif Court, Villupuram.

2. The petitioner has filed the suit in O.S. NO. 76 of 2013 against the respondent, seeking for the relief of permanent injunction. The aforesaid suit was posted for enquiry on 05.12.2016. Since the petitioner was suffering from jaundice, he failed to appear on that date. Hence, the suit was dismissed for default. Thereafter, the petitioner filed an Interlocutory Application in I.A. No. 613 of 2017 to condone the delay of 78 days in filing an application to set aside the order of dismissal under Order IX Rule 9 of CPC. The learned counsel for the petitioner would submit that without considering the bonafide reasons stated by the petitioner in the affidavit, the court below has dismissed the aforesaid application. Challenging the same, the present revision petition is filed.

3. The learned counsel for the respondent would submit that the petitioner has not placed any documentary proof for the reasons stated in the affidavit. Since there is no satisfactory reasons to condone the delay, the application has been rightly dismissed by the court below.

4. Considered the facts and contentions of the learned counsel for the both the parties.

5. The petitioner has filed an application to condone the delay stating that he was suffering from jaundice and hence he could not appear on 05.12.2016. As per the decision of the Hon'ble Supreme Court in the case of *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.*, reported in (2013) 12 SCC 649, a liberal, pragmatic, justice-oriented, non- pedantic approach has to be taken while dealing with an application for condonation of delay.

6. Therefore, this Court has no hesitation to set aside the order passed by the court below, on imposing cost of Rs.500/- to the petitioner, to be paid to the respondent, within a period of two weeks from the date of receipt of a copy of this order.

7. In fine, the Civil Revision Petition is allowed, on the above condition. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

22.02.2018

Index : Yes/ No

Speaking order/ Non speaking order

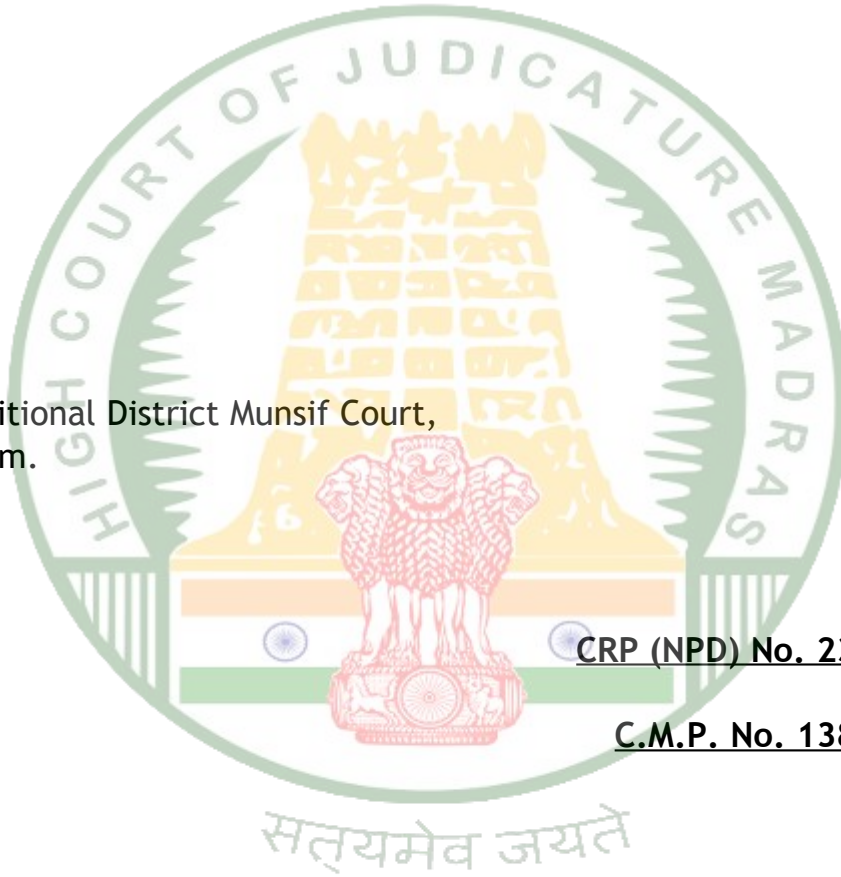
[Issue order copy on 02.04.2018]

D. KRISHNAKUMAR J.,

avr

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To
The Additional District Munsif Court,
Villupuram.



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