

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1579 of 2015
and M.P.No.1 of 2015

1.P.M.Maragatham
2.P.Saravanan
3.P.Lathamaheswari
4.P.Kanchana
5.P.Banumathi
6.P.Sivakumar

.. Petitioners

Vs.

The Commissioner,
Salem City Municipal Corporation
Salem – 636 001.

.. Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 17.02.2014 made in I.A.No.663 of 2013 in O.S.No.938 of 2010 on the file of the I Additional District Munsif Court, Salem.

For Petitioners : Mr.T.M.Hariharan

For Respondent : Mrs.K.Bhuvaneswari

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 17.02.2014 made in I.A.No.663 of 2013 in O.S.No.938 of 2010 on the file of the I Additional District Munsif Court, Salem.

2. The petitioners are the plaintiffs and respondent is defendant in O.S.No.938 of 2010 on the file of the I Additional District Munsif Court, Salem. The petitioners filed said suit for declaration of prosecution notice dated 16.08.2010 bearing assessment No.183441 of the respondent is arbitrary, illegal and for injunction. The respondent filed written statement in the month of December 2010 and subsequently, did not contest the suit. The suit was posted to 19.10.2011 for cross-examination of P.W.1. The respondent was absent and an exparte decree was passed on that day. The respondent filed I.A.No.663 of 2015 to condone the delay of 251 days in filing application to set aside the exparte decree.

3. According to the respondent, due to assembly election, staff were deputed for election work and subsequently, they could not give any instruction to the counsel to cross-examine the

witness. The delay is neither wilful nor wanton.

4. The petitioners filed counter affidavit and denied all the averments made in the said application and contended that reason given by the respondent is vexatious and not sufficient to condone the huge delay of 251 days.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, allowed the application in the interest of justice.

6. Against the said order dated 17.02.2014 made in I.A.No.663 of 2013 in O.S.No.938 of 2010, the present Civil Revision Petition is filed by the petitioners/plaintiffs.

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

8. From the materials available on record, it is seen that the respondent has explained the delay in filing application to condone the delay in filing application to set aside the exparte decree. According to the respondent, due to election work, the concerned

staff could not meet the counsel and give instruction. The contention of the learned counsel for the petitioners is that the respondent has not given any particulars with regard to election work and who are deputed for the election work. It is seen from the impugned order of the learned Judge that the petitioners have not denied that the election was conducted.

9. It is a well settled that application for condoning the delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the parties have given acceptable and valid reason and the intention of the parties should be bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits.

10. In the present case, the reason given by the respondent is valid and sufficient to condone the delay of 251 days in filing application to set aside the exparte decree. In view of this fact, the impugned order of the learned Judge allowing the application to give an opportunity to the respondent to putforth their case on merits, does not warrant any interference of this Court.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.01.2018

Index:Yes/No

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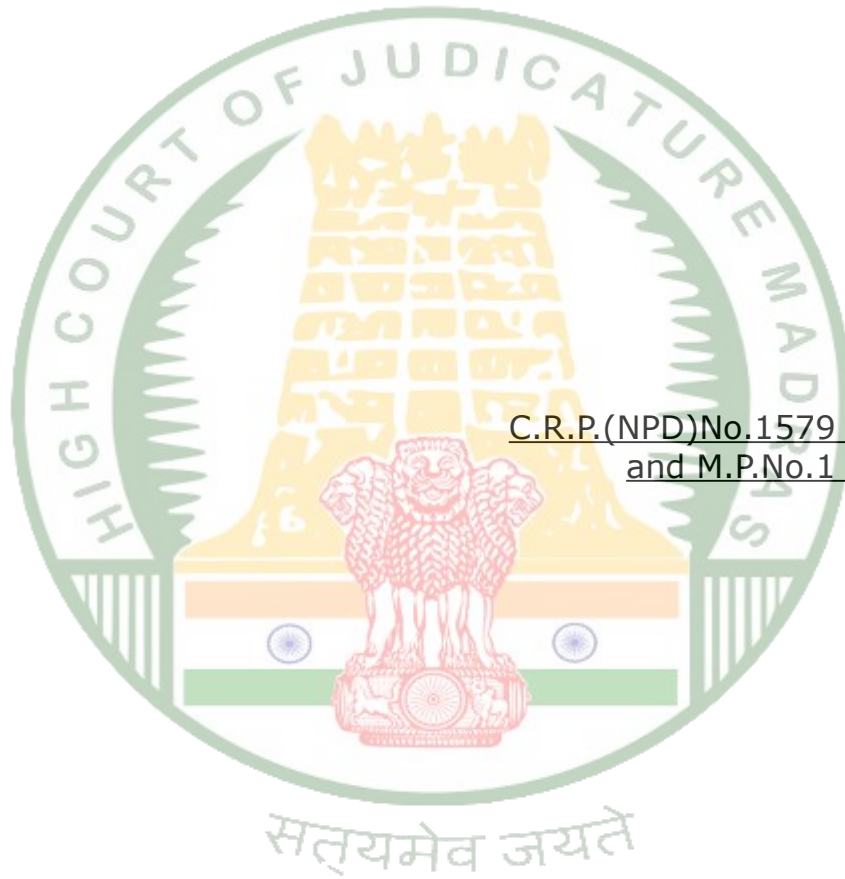
The I Additional District Munsif
Salem.



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V.M.VELUMANI,J.

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