

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 25.06.2018

CORAM :

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN****C.R.P.(NPD).No.664 of 2018 and**
C.M.P.No.3423 of 2018

B.Oviyamathi

... Petitioner

Vs.

1. Saravanamoorthy
2. Kaviarasan

...Respondents

Civil Revision Petition has been filed under Section 115 of CPC as against the fair and decretal order dated 06.11.2017 made in IA.118 of 2016 in OS.No.34 of 2011 on the file of the District Munsif, Katpadi, Vellore District.

For Petitioner : Mr.R.Dinesh Kumar

ORDER

This civil revision petition has been filed against the order dated 06.11.2017 made in IA.118 of 2016 in OS.No.34 of 2011 on the file of the District Munsif, Katpadi, Vellore District.

2. The respondents herein filed the suit against the revision petitioner for declaration and permanent injunction. After completion of pleadings and framing of issues, when the suit was posted for trial, on that day the respondents/plaintiff did not appear and adduce any evidence. Therefore, the

suit was dismissed for default on 05.02.2014. The respondents/plaintiffs have not taken any steps for restoring the suit. After consumption of 647 days, the respondents filed an application to restore the suit, the petitioner filed counter and after hearing both sides, the trial Court allowed the application on payment of cost of Rs.1000/- payable to the petitioner. Aggrieved against the said order, the revision petitioner is before this Court.

3. Heard the learned counsel for the petitioner and perused the materials available on records.

4. The main contention of the revision petitioner is that when the suit is posted for trial on 05.02.2014, neither the respondents nor the learned counsel appearing on behalf of the respondents was present. Hence, the suit was dismissed for default on the same day itself. In the affidavit filed in IA.No.118 of 2016 for condonation of delay, no sufficient reason has been stated, except stating that first respondent is heart patient and hospitalised for taking treatment, the second respondent is not aware of the dismissal order, after recovering from the illness the first respondent followed the case and came to know about the dismissal order and thereafter filed an application to restore the suit with an application to condone the delay of 647 days in filing the petition to restore the suit. The second respondent being a adult member of the family and party to the proceedings has not followed the case regularly, but he should have

done it. The reasons stated in the affidavit is not sufficient enough to condone the delay of 647 days, the delay has not been properly explained on day to day basis. In this case, the reasons stated in the affidavit is flimsy in nature. Admittedly, in this case after completion of pleadings and framing the issues, when the suit is posted for trial, the suit is dismissed for default. This Court in order to meet the ends of justice and considering the fact no prejudice would be caused to the revision petitioner, if the delay is condoned. At the same time, the inconvenience caused to the revision petitioner has to be compensated adequately.

5. Under such circumstances, this Court is inclined to confirm the order passed by the trial Court with the following modification :-

(i) the respondents/plaintiffs are directed to deposit a sum of Rs.15,000/- instead of Rs.1,000/-towards cost to the Credit of IA.No.118 of 2016 in OS.No.34 of 2011 on the file of the District Munsif, Katpadi, Vellore District on or before 06.07.2018. On such deposit, the revision petitioner is at liberty to withdraw the same.

(ii) The suit was dismissed at the state of commencement of trial, hence, the trial Court is directed to dispose of the suit within four months from the date of receipt of copy of this order.

(iii) No application for extension of time for disposing the suit will be granted or entertained. If any application is filed, the same will be viewed seriously. (and)

(iv) Both the parties and their respective counsel are directed to cooperate for trial and for strict compliance of the direction of this Court.

6. With the above direction, the civil revision is disposed of. No costs.
Consequently, connected miscellaneous petition is closed.

Internet: Yes/No
speaking order / non speaking order
tsh

To

The District Munsif, Katpadi,
Vellore District

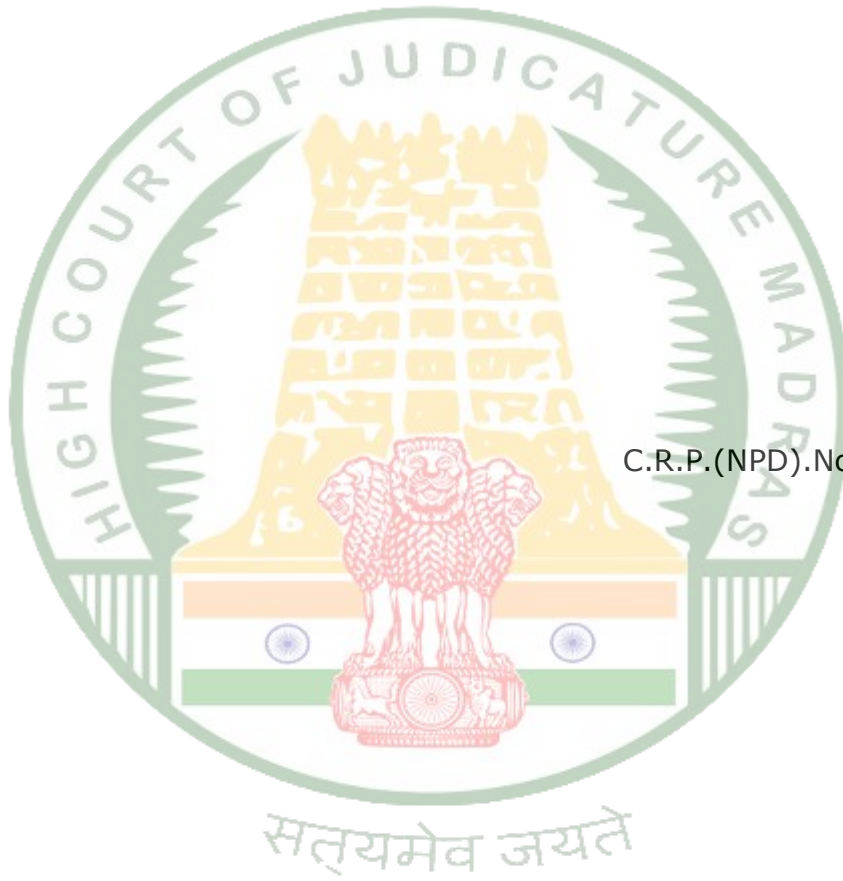
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P.VELMURUGAN, J.,

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