

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 05.04.2018**

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**C.R.P.(NPD) No.1726 of 2010**

1.Ramasamy (Died)
2.Amirthalingam
3.Velmurugan

... Petitioners

Vs.

1.Banumathi
2.Purushothaman
3.Viswanathan
4.Pugaleswaran

... Respondents

Prayer: Civil Revision Petition filed under Under Section 115 of Civil Procedure Code, against the fair and decretal order passed by the Learned District Munsif, Jayankondam dated 08.12.2009 in I.A.No.258 of 2009 in O.S.No.189/2000.

For Petitioners : Mr.G.Ilamurugu

For Respondents : No appearance

ORDER

CRP (NPD) No.1726 of 2010, has been filed challenging the order of dismissal dated 08.12.2009, passed in I.A.No.258 of 2009 in O.S.No.189 of 2000.

2.I.A.No.149/2007 was filed under Order IX Rule 9 of CPC to restore the suit which was dismissed for default. I.A.No.149/2007 was allowed on condition that the plaintiff pays a sum of Rs.750 to the respondents on or before 22.01.2008. Since the plaintiff failed to comply with the conditional order on time, I.A.No.149/2007 came to be dismissed by the Trial Court. The petitioner filed I.A.No.258/2009 in O.S.No.189 of 2000 seeking to extend the time for payment of cost under Section 148 read with Section 151 of CPC, which was dismissed by the Trial Court on the ground that only appeal is maintainable.

3.The learned Counsel for the petitioners submitted that there is no necessity to file an appeal when the time for payment has elapsed.

4.He drew the attention of this Court to paragraph Nos.16 to 19 of a Division Bench of this Court in the case of **Gowri Ammal vs. Murugan and others** reported in **2006 (2) MLJ 729**, which

according to him is identical to the facts of the instant case.

Paragraph Nos.16 to 19 are reproduced hereunder:

“...16.The above decision would make it clear that the Court cannot be made helpless or powerless where the upper limit fixed under Section 148 cannot take away the power of the Court under Section 151 to pass orders, as may be necessary, for the ends of justice or to prevent abuse of process of Court. The rigid operation, as contained in Section 148, without considering Section 151, as laid down by the Supreme Court, would lead to absurdity. Therefore, both the Sections have to be read together, in order to find out, whether the Petition for extension of time can be entertained or not.

17.The duty of the Court of Law is to administer justice, sometimes loosening the rigors of the procedural law. It is the substantive justice, which should be administered and not the procedural justice. Procedure is meant to facilitate the way for the administration of real justice and not to defeat it.

18.In the light of the principles laid down by the Supreme Court in Salem Advocate Bar Association, T.N. v. Union of India (supra), Sections 148 and 151, C.P.C. allow extension of time, even if the original period fixed has expired. Similarly, Section 149 also is equally liberal in this respect.

19.So, a conjoint reading of Sections 148, 149 and 151, C.P.C. would make it clear that the Court has power to extend time beyond the stipulated period, when sufficient cause exists or events pointed

out to the Court for non-compliance of the order are beyond the control of the party, as the object of the Code is not to promote failure of justice....”

5.As seen from the Division Bench Judgement of this Court, there is no necessity to file an appeal when the cost imposed by the Court has not been paid within the stipulated time. The petitioner can seek extension of time under Section 148 CPC. In the instant case, the petitioners had sought extension of time, for payment of cost under Section 148 CPC.

6.The Trial Court dismissed the application on the ground that the petitioner did not file the original death certificate of their father, who was the original plaintiff. The respondents have also not disputed the date of death of the father of the petitioners. Therefore, sufficient cause was shown by the petitioner for seeking condonation of delay. This Court is of the considered view having shown sufficient cause, the Trial Court ought to have allowed I.A.No.258 of 2009. Therefore, in the considered view of this Court, the Trial Court committed an error by dismissing I.A.No.258 of 2009.

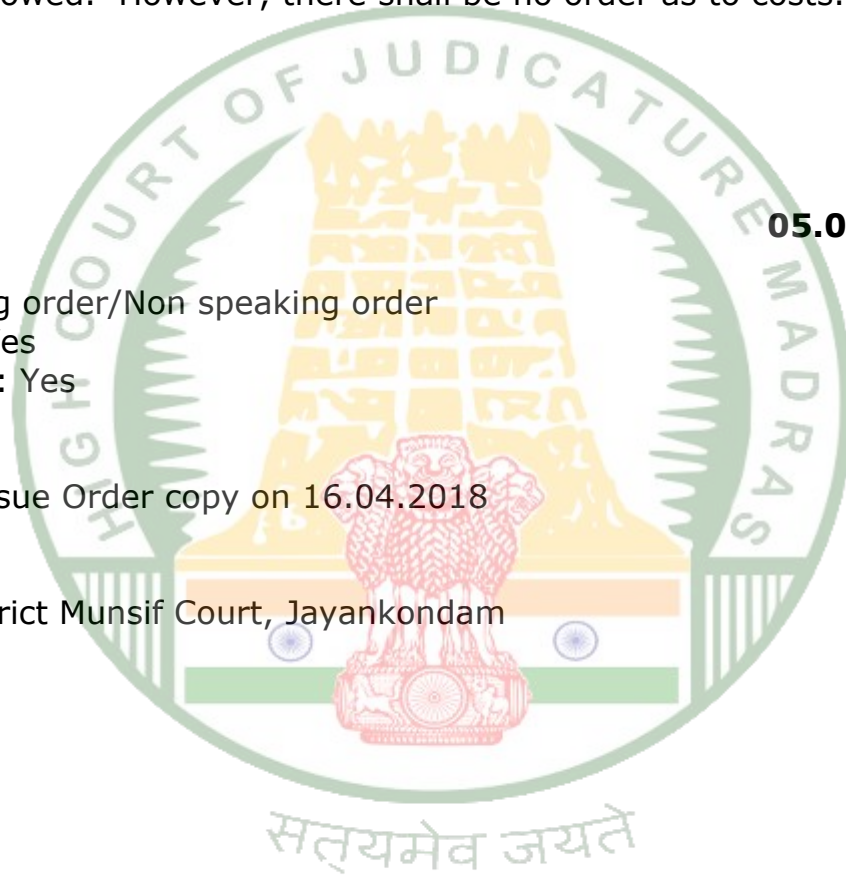
7. Accordingly, the order dated 08.12.2009 in I.A.No.258 of 2009 in O.S.No.189 of 2000 passed by the District Munsif Court, Jayakondam, is set aside and CRP (NPD) No.1726 of 2010 shall stand allowed. However, there shall be no order as to costs.

05.04.2018

Speaking order/Non speaking order
Index: Yes
Internet: Yes
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Note: Issue Order copy on 16.04.2018
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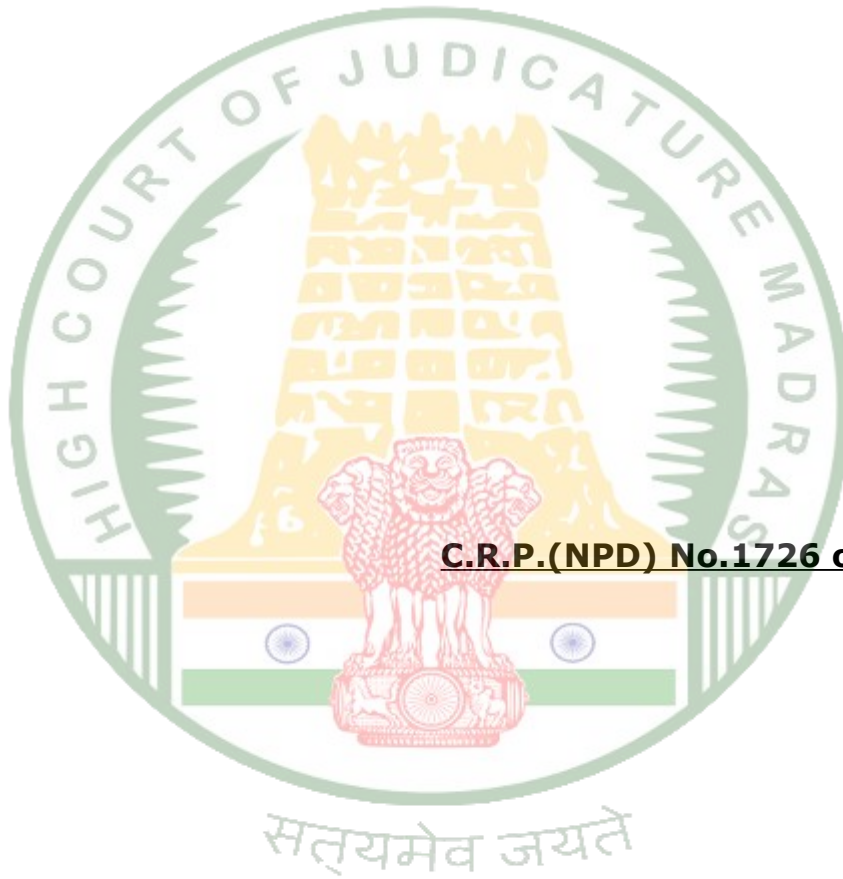
The District Munsif Court, Jayankondam



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