

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.09.2018

Coram

The Honourable Ms.Justice P.T.ASHA

C.R.P (NPD) No.1703 of 2006
and
M.P.No.1 of 2006

Krishnamoorthy

...Petitioner

Versus

1.M.Kaliyaperumal
2.P.Selvaraj
3.K.Poomalai
4.T.Nagarathinam
5.R.Murugaiyan
6.P.Palanisamy
7.Gnanambigai
8.J.Thirumal
9.J.Govindaraj

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 23.06.2006 made in I.A.No.236 of 2006 in I.A.No.2285 of 2004 in O.S.No.337 of 2002 on the file of the Principal District Munsif, Cuddalore.

For Petitioner : Mr.P.Mathivanan

For Respondents: Mr.S.K.Rahunathan

O R D E R

This Civil Revision Petition is filed challenging the order passed by the learned Principal District Munsif, Cuddalore in I.A.No.236 of 2006 in I.A.No.2285 of 2004 in O.S.No.337 of 2002 dated 23.06.2006, in and by which the learned District Munsif had dismissed the Application seeking to condone the delay of 155 days in filing the Application to set aside the ex-parte order passed in I.A.No.2285 of 2004 in O.S.No.337 of 2002 dated 11.03.2005.

2. The facts in a nutshell necessary for the disposal of this revision is that the petitioner herein had filed a Suit for permanent injunction against the respondents herein. The Suit was decreed by a judgment and decree dated 25.11.2003. It appears that the respondents herein had filed I.A.No.2285 of 2004 seeking compensation by way of damages against the revision petitioner. The Application was posted for filing of the counter affidavit on 11.03.2005 and since the counter affidavit was not filed an ex-parte order was passed in the above Interlocutory Application.

3. It is the case of the revision petitioner that he was unable to file the counter affidavit in I.A.No.2285 of 2004 only on account of the fact that his Advocate's Clerk has not intimated him about the posting of the case for filing the counter affidavit. He would submit that he could not be penalised for the fault of his Advocate's Clerk.

4. The statement of the petitioner is resisted by the respondents herein inter alia contending that I.A.No.2285 of 2004 was allowed as early as on 11.03.2005 and after having waited for more than four months, the first respondent herein had filed an Execution Petition in E.P.No.186 of 2005. In this petition, the revision petitioner had entered appearance on 11.07.2005 and had taken an adjournment to 16.08.2005 for filing his counter affidavit and yet another adjournment to 15.09.2005, on which date the counter affidavit was filed by him. It simultaneously appears that the impugned Interlocutory Application subject matter of this revision also came to be filed by the petitioner on 24.01.2006. The respondents would submit that the petitioner has filed I.A.No.236 of 2006 with a malafide intention knowing fully well that he has no defence in E.P.No.186 of 2005 he is deliberately filing this Application only to drag on the proceedings.

5. The learned Principal District Munsif, Cuddalore by his order dated 23.06.2006, proceeded to dismiss the said Application on the ground that the reasons given in the affidavit filed in support of the impugned Application did not sound convincing and that the Application has been filed only after the filing of the Execution Petition and that too belatedly.

6. Heard Mr.P.Mathivanan, learned counsel for the petitioner and Mr.S.K.Rahunathan, learned counsel for the respondents.

7. It is seen that the revision petitioner had obtained a decree and the respondents have filed I.A.No.2285 of 2004 under Section 95 of C.P.C claiming compensation for the damages against the revision petitioner. From the arguments of the learned counsel for petitioner, it appears that the Application under Section 95 of C.P.C has been filed by the respondents on the ground that the revision petitioner's suit with reference to the portion of the property has been negatived and therefore, the respondents have filed the Application under Section 95 of C.P.C. The revision petitioner has been prevented from filing his counter affidavit only on account of not been informed about the ex-parte order and immediately, on coming to know about the same, the Application has been filed albeit with a delay. The petitioner has also filed necessary Application for condoning the delay giving reasons for the delay.

7.2. The learned District Munsif, Cuddalore has dismissed the Application only on the ground that no convincing reasons had been given and that the Application has been filed after the petitioner had entered appearance in the Execution proceedings. Considering the fact that the petitioner has substantial case to put forward in the Application filed under Section 95 of C.P.C and also considering the fact that the Application to condone the delay has been filed as quickly as possible. I am of the view that the order of the learned Principal District Munsif, Cuddalore in dismissing the Application to condone the delay of 155 days is erroneous.

8. In the result, this Civil Revision Petition is allowed and the order of the learned Principal District Munsif, Cuddalore in I.A.No.236 of 2006 in I.A.No.2285 of 2004 in O.S.No.337 of 2002 dated 23.06.2006 is set aside. The learned Principal District Munsif, Cuddalore is directed to number and dispose of the Application for restoration within a period of one month from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

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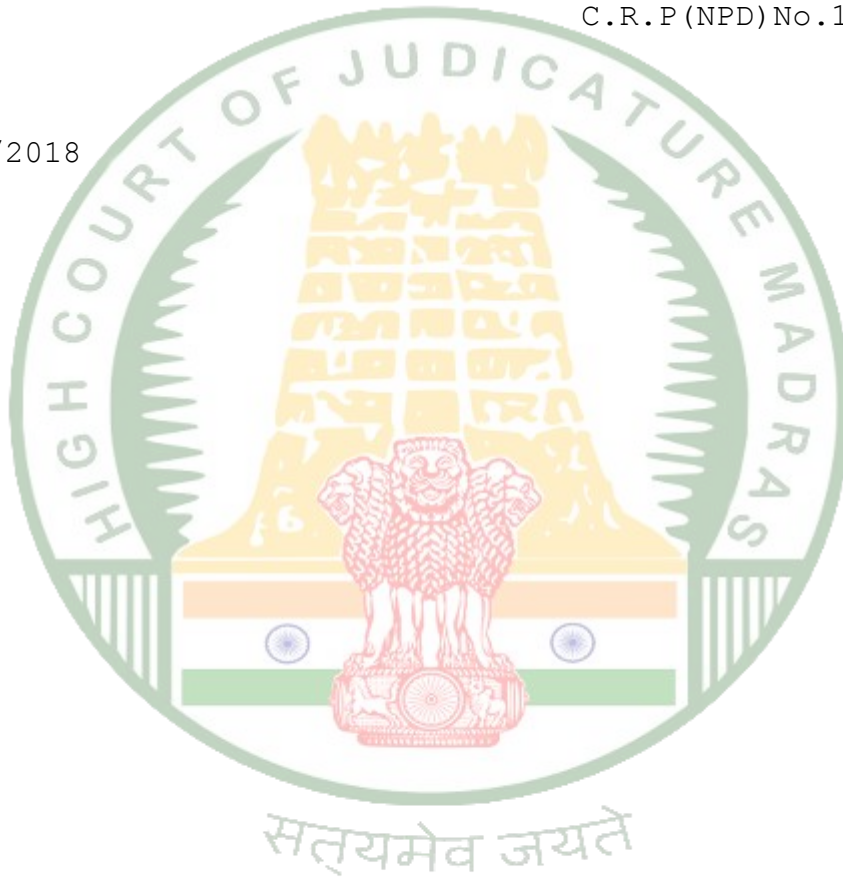
Sub Assistant Registrar

To

The Principal District Munsif,
Cuddalore.

C.R.P (NPD) No.1703 of 2006

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