

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.M.P No.1477 of 2018
in
CRP. NPD SR. No. 42123 of 2017

1. S. Ganapathy
2. Sarasu .. Petitioners/Petitioners

Vs.

Thirunavukarasu ... Respondent/Respondent

Memorandum of Civil Miscellaneous Petition Under Section 5 of Limitation Act, praying this court, to condone the delay of 3150 days in filing the above CRP.

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 26.08.2008 passed in I.A. No.61 of 2007 in O.S. No.27 of 1998 on the file of the Judicial Magistrate I cum District Munsif Court, Wallajah, Vellore District.

For Petitioners : Mr. C. Prakasam

O R D E R

The petitioners have filed the present Miscellaneous Petition to condone the delay of 3150 days in filing the revision petition. The learned counsel for the petitioners submitted that the 1st petitioner was suffering from mental illness and hence there is an inordinate delay in filing the present revision petition.

2. On perusal of the records, it is found that the respondent has filed the suit in O.S. No. 27/1998 for specific performance. An ex-parte order was passed on 21.02.2002. The revision petitioners filed an Interlocutory Application in I.A. No. 61 of 2007 seeking to condone the delay of 1825 days in filing the petition to set aside the ex-parte decree and the same was dismissed by the court below. Challenging the same, the present civil revision petition is filed, along with the Miscellaneous Petition to condone the delay of 3150 days in filing this revision.

3. The petitioners have not stated any proper reasons in the affidavit filed in support of the petition. The petitioners have given a different statement before the court below. In the present application, the petitioners have not produced any documentary evidences to prove his illness. Therefore, there is no prima facie case made out by the petitioners to condone the inordinate delay in filing Civil Revision Petition.

4. The Hon'ble Supreme Court in H. Dohil Constructions Company Private Limited vs. Nahar Exports Limited and another reported in (2015) 1 SCC 680, have held that unless the reasons are properly adduced, the delay cannot be condoned. The relevant paragraph is extracted below:

" 24. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered."

5. In the light of the above decision, since no sufficient cause has been shown for the inordinate delay in filing the application, the Civil Miscellaneous Petition deserves to be dismissed.

6. Therefore, the Civil Miscellaneous Petition is dismissed and consequently the Civil Revision Petition is also dismissed at the SR stage itself. No costs.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

The Judicial Magistrate I
cum District Munsif Court,
Wallajah, Vellore District.

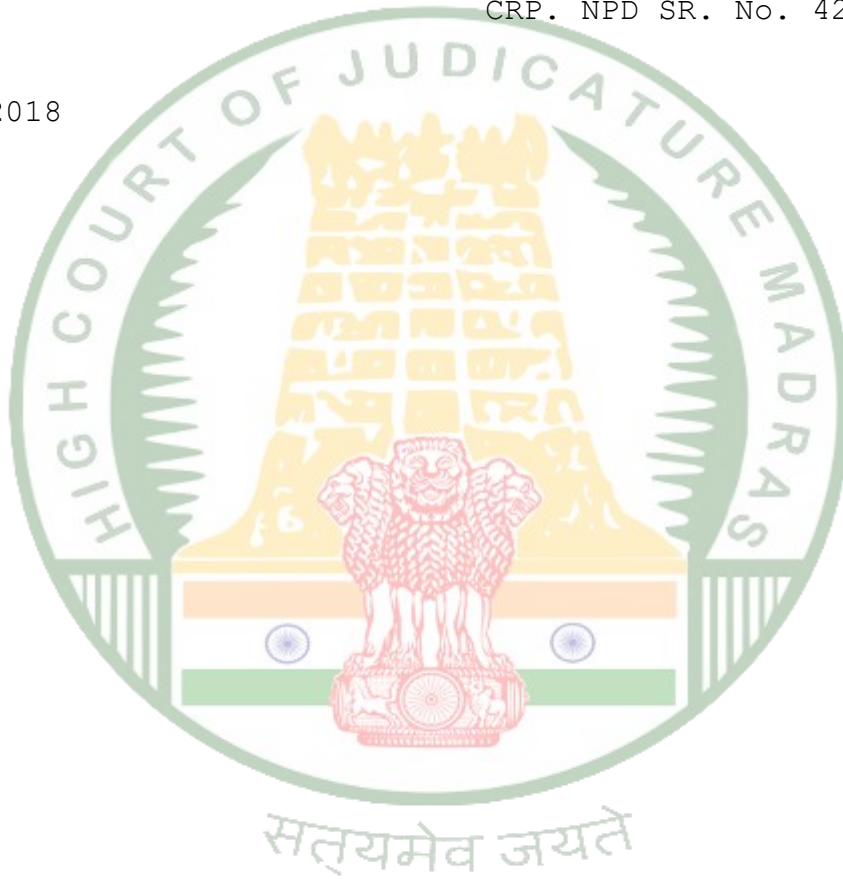
+lcc to Mr. C. Prakasam, Advocate sr.no.6360

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