

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.06.2018

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) No.3441 of 2010

1.Nallalaghi
2.Periyasamy

... Petitioners

versus

1.Periya Kalingan
2.Ramasamy
3.Natesan
4.Ramachandran

... Respondents

Prayer: Petition filed under Section 115 of Civil Procedure Code to set aside the fair and decretal order in I.A. No.441 of 2005 in unnumbered A.S. No. on the file of Sub Court, Namakkal dated 07.06.2010.

For petitioners : Mr.S.Sarath Chandran
for K.M.Vijayan Associates

For respondents : Mr.T.Dhanyakumar

ORDER

The above Civil Revision Petition is directed against the judgment of the Subordinate Judge, Namakkal in I.A. No.441 of 2005 in unnumbered First Appeal in A.S. No. of 2005 dismissing the petitioners' application to condone the delay of 387 days in filing the appeal.

2.The petitioners originally had filed an Original Suit in O.S. No.544 of 2000 on the file of the District Munsif, Namakkal seeking a declaration of title and for consequential injunction in respect of the suit property. The said suit was dismissed on 22.06.2004. The revision petitioners did not immediately take up the matter on appeal. Thereafter, on 26.09.2005, the petitioners had filed I.A. No.441 of 2005 in unnumbered A.S. No. of 2005 on the file of the Sub Court, Namakkal seeking to condone the delay of 387 days in filing the appeal.

3.The reasons that have been adduced in the affidavit filed in support of the application for condoning the delay is that though the petitioners had obtained the certified copy of the order within a few days of the same being made ready by the registry and though they had handed over the same to the Advocate for preferring an Appeal, subsequently the first petitioner had met with an accident in which he had suffered a fracture in his hip for which he had taken treatment. They would also contend that the second petitioner had left for eking his livelihood to Bangalore since there was no work in his native village. Thereafter, when they had returned to Namakkal and contacted their Advocate,

they were informed that there was a delay and they were advised to file an Appeal with an Application to condone the delay.

4.The defendants countered the above Application contending inter alia that the only attempt of the petitioners is to protract the proceedings since they had appeared through counsel in the proceedings on 16.09.2005 in ARD No.147 of 2005 filed by the respondents for return of the original documents and on the subsequent adjournment dates namely 23.09.2005 and 04.10.2005, they had not objected for the return of the original documents to the respondents.

5.Learned Subordinate Judge, Namakkal, taking note of the conduct of the petitioners in participating in ARD No.147 of 2005, took a view that the only attempt of the petitioners was to protract the proceedings and that the reasons given are lack of bonafide and consequently, the learned Judge dismissed the Application as against which, the present revision petition has been filed.

6.The learned counsel for the petitioners would argue that the

petitioners have set out valid reasons for their failure to file the Appeal in time and further as soon as they had entered appearance in the proceedings for return of documents and they have taken steps to file the Appeal which would go to show their bonafide in contesting the Appeal.

7.The learned counsel appearing for the respondents would reiterate his contention raised before the Sub Court, Namakkal and once again contend that the petitioners lack bonafide.

8.Considering the fact that the delay has been caused owing to the ill health of the petitioners and also taking note of the fact that immediately on coming to know about the Application for return of documents, the petitioners have taken steps to proceed with the Appeal, this Court feels that the revision petitioners had made out a case for the condonation of delay. However, considering the fact that the revision petitioners have kept quite for over a year, this Court feels that the delay should be condoned on terms.

9.Accordingly, this revision petition is allowed on payment of costs of Rs.5,000/- to be payable by the revision petitioners within a

period of two weeks from the date of receipt of a copy of this order to the counsel for the respondents, failing which, the revision petition would stand dismissed without further reference to the Court.

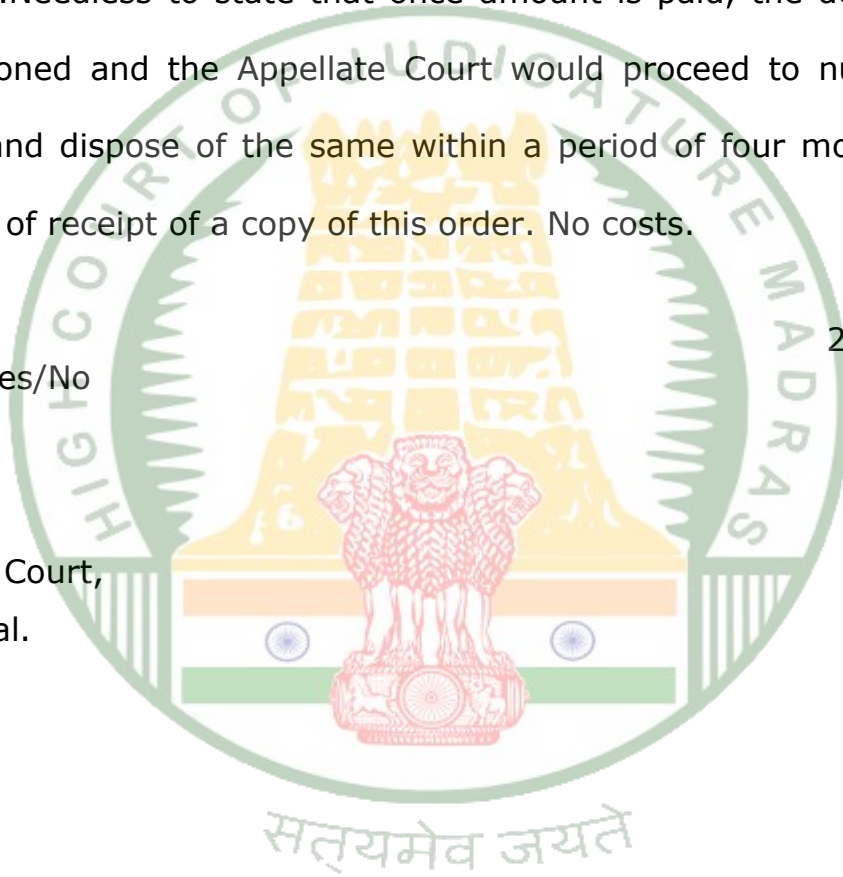
10. Needless to state that once amount is paid, the delay would be condoned and the Appellate Court would proceed to number the Appeal and dispose of the same within a period of four months from the date of receipt of a copy of this order. No costs.

21.06.2018

Index: Yes/No
vga

To

The Sub Court,
Namakkal.



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P.T.ASHA,J.

vga



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