

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.02.2018

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CIVIL REVISION PETITION (NPD) No.364 of 2016

1.P.Kaboorannan

2.Thorali

3.Chinnathambi

4.Thotathamman

.. Petitioners

vs

1.Pappannan

2.Kuppammal

3.Devaraj

4.Radha

5.Veerapathiran

6.Kuppulingam

7.Mahalingam

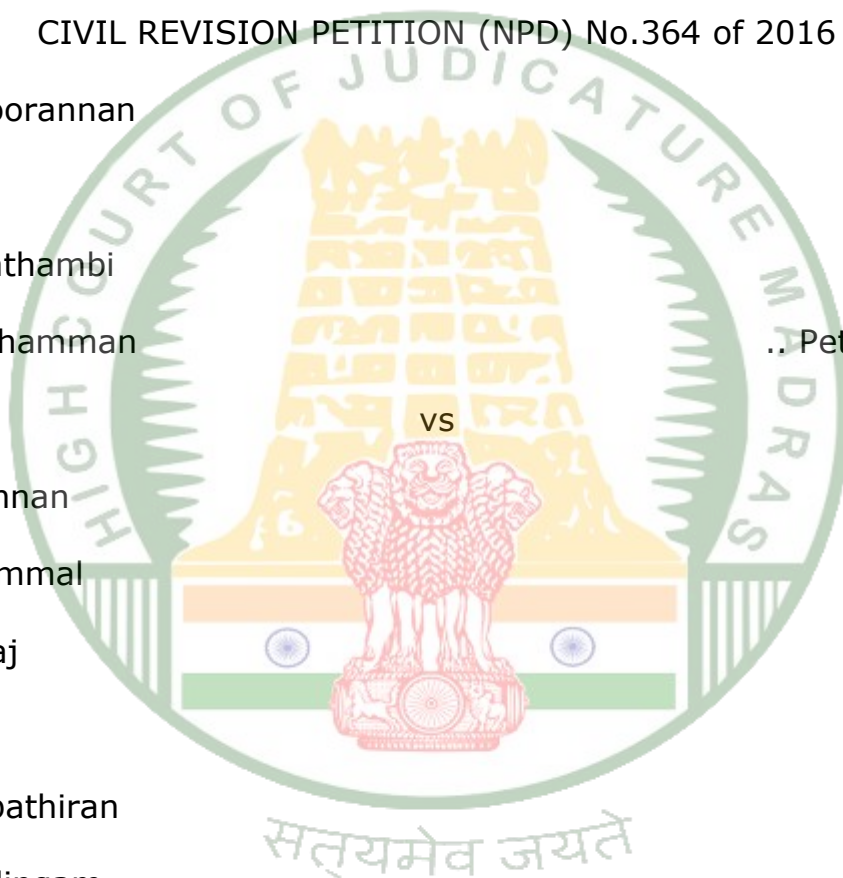
8.Chinnathambi

9.Chandralekha

10.Natarajan

11.Chokkalingam

.. Respondents



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The Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decretal order dated 24.08.2015 in I.A.No.564 of 2015 in O.S.No.100 of 2012, dated 24.08.2015 on the file of the Additional District Munsif Court, Vaniyambadi.

For Petitioners ... Mr.D.Balachandran

For Respondents ... Mr.T.M.Hariharan

ORDER

The Civil Revision Petition has been filed to set aside the fair and decretal orders dated 24.08.2015 in I.A.No.564 of 2015 in O.S.No.100 of 2012, dated 24.08.2015 on the file of the Additional District Munsif Court, Vaniyambadi.

2. The learned counsel for the petitioners submitted that the petitioners/plaintiffs filed a suit in O.S.No.100 of 2012 against the respondents/defendants for declaration and permanent injunction. Since the petitioners have not appeared before the Court below, the suit was dismissed for non prosecution on 01.09.2014. Hence, the petitioner filed an application in I.A.No.564 of 2015 in O.S.No.100 of 2012 under Section 5 of the Limitation Act to condone the delay of 182 days in filing the application to restore the suit. In the affidavit filed in support of the application, it is stated by the first petitioner that

he was infected by Chickun Gunia from 24.08.2014 and bedridden therefore, he could not appear before the Court below on the hearing date. The Court below, without considering the aforesaid reasons, erroneously dismissed the application.

3.The learned counsel for the respondents submitted that the the petitioners have not stated any proper reason to condone the delay of 182 days. Further, the first petitioner was only suffered by Chickun Gunia and he has not produced any document in respect of the disease suffered by him. Hence, the Court below has rightly dismissed the application and nothing warrants this Court to interfere with the order dated 24.08.2015.

4.Heard learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

5.In ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors., reported in (2013) 12 SCC 649***, the Hon'ble Supreme Court has observed that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay.

6.Considering the reasons stated in the affidavit and in the light of the decision cited supra, this Court is inclined to pass the following order:

"(i)The order dated 24.08.2015 in I.A.No.564 of 2015 in O.S.No.341 of 2010 passed by the learned Additional District Munsif, Vaniyambadi is set aside and the suit is restored.

(ii)The petitioners are directed to pay a sum of Rs.2,500/- (Rupees Two thousand and five hundred only) to the respondents within a period of two weeks from the date of receipt of a copy of this order.

(iii)The learned Additional District Munsif, Vaniyambadi is directed to take O.S.No.341 on his file.

(iv)The Civil Revision Petition is allowed. No costs.

(v)For reporting compliance, post the Civil Revision Petition after six weeks from the date of receipt of a copy of this order. "

28.02.2018

Speaking/Non Speaking order.
Index: Yes/No.
cla

To
The Additional District Munsif,
Vaniyambadi,
Vellore.



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D.KRISHNAKUMAR,J.
cla



C.R.P.(NPD)No.364 of 2016

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Date: 26.02.2018