

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (NPD) No. 719 of 2016
and
C.M.P. No.3700 of 2016

1. P. Ramani
2. P. Priya
3. P. Ananthi

.. Petitioners

Vs

S.K. Sadasivam

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and final order dated 21.11.2015 in I.A. No. 151 of 2014 in O.S. No.633 of 2007 on the file of Principal District Munsif Court, Erode and allow the civil revision petition.

For Petitioners : Mr. P. Parthi Kannan

For Respondent : Mr. M. Ashwin Kumar
for M/s. Sarvabhauman Associates

ORDER

This Revision arises against the fair and final order dated 21.11.2015 in I.A. No. 151 of 2014 in O.S. No.633 of 2007 on the file of Principal District Munsif Court, Erode.

2. The petitioner's father filed a suit in O.S. No.633 of 2007 for permanent injunction. Since the respondent/ 4th defendant was set ex-parte in the suit, he filed an Interlocutory Application in I.A. No.151 of 2014, seeking to condone the delay of 1647 days in filing the petition under Order 9 Rule 13 of CPC to set aside the ex-parte decree dated 08.07.2009. The respondent had stated in the petition, the counsel for the petitioner therein has not communicated to him and hence he was not aware of the proceedings in the above suit. On coming to know about the ex-parte decree, the respondent has filed the aforesaid application. The court below has allowed the petition, condoning the delay of 1647 days.

3. The learned counsel for the petitioners would submit that the court below has failed to consider the objections of the

petitioners that there is an inordinate delay, in filing the application to condone the delay. Hence, the order of the court below is liable to be set aside.

4. The learned counsel for the respondent would submit that the suit has been filed by the petitioners for bare injunction against the respondent and 3 others, in respect of several items of property. The respondent has not received any communication from the counsel and thereafter the respondent engaged the present counsel and has filed the application to condone the delay. Considering the aforesaid facts and that the respondent has engaged more than two counsel to conduct the case. Hence, the delay in filing the petition has occurred only due to bonafide reasons and allowed the application. Therefore, the Civil Revision Petition is liable to be dismissed.

5. The learned counsel for the petitioners would submit that in the event of considering the said application by this Court, heavy cost may be imposed against the respondent for allowing the said application. The court below, while condoning the delay has not even imposed any

cost against the respondent. Therefore, prayed this Court to impose heavy cost to condone the delay, since the petitioners have faced huge delay of ten years in the proceedings.

6. Taking into consideration the above said submissions of the parties, the fact that the said application has been filed by the 4th defendant and the other defendants remain ex-parte, in order to give one more opportunity to the respondent and since the petitioners may not have any serious objection in condoning the delay in filing the said petition to set aside the ex-parte decree by imposing heavy cost on the respondent and in the light of the decision of the Hon'ble Supreme Court in the case of *N. Balakrishnan vs. M. Krishnamurthy reported in 1999-1-LW 739*, this Court is of the opinion that to compensate the inordinate delay, the respondent has to pay exemplary cost to the petitioner.

7. In view of the above, this Court is inclined to pass the following order :

1. The order passed in I.A. No. 151 of 2014 in O.S. No. 633 of 2007 dated 21.11.2015 is modified to the extent of imposing cost of

Rs.25,000/- payable to the petitioners and Rs.5000/- to the Tamil Nadu Mediation and Conciliation Centre, Chennai, within a period of two weeks from the date of receipt of a copy of this order.

2. On instructions, both the parties undertake to co-operate for early disposal of the suit.
3. Since the said suit is of the year 2007, the trial court is directed to dispose of the suit, as expeditiously as possible, preferably on or before 30.07.2018, if the said conditional order is complied with, by the respondent.
4. In default of payment of cost by the respondent within the stipulated time, the I.A. No. 151 of 2014 in O.S. No. 633 of 2007 will be dismissed automatically, without further reference to this Court.

8. The Civil Revision Petition is partly allowed, with the above direction. Consequently, the connected Miscellaneous Petition is closed. No costs.

Post on 23.03.2018 for reporting compliance.

05.03.2018

D. KRISHNAKUMAR J.,

avr

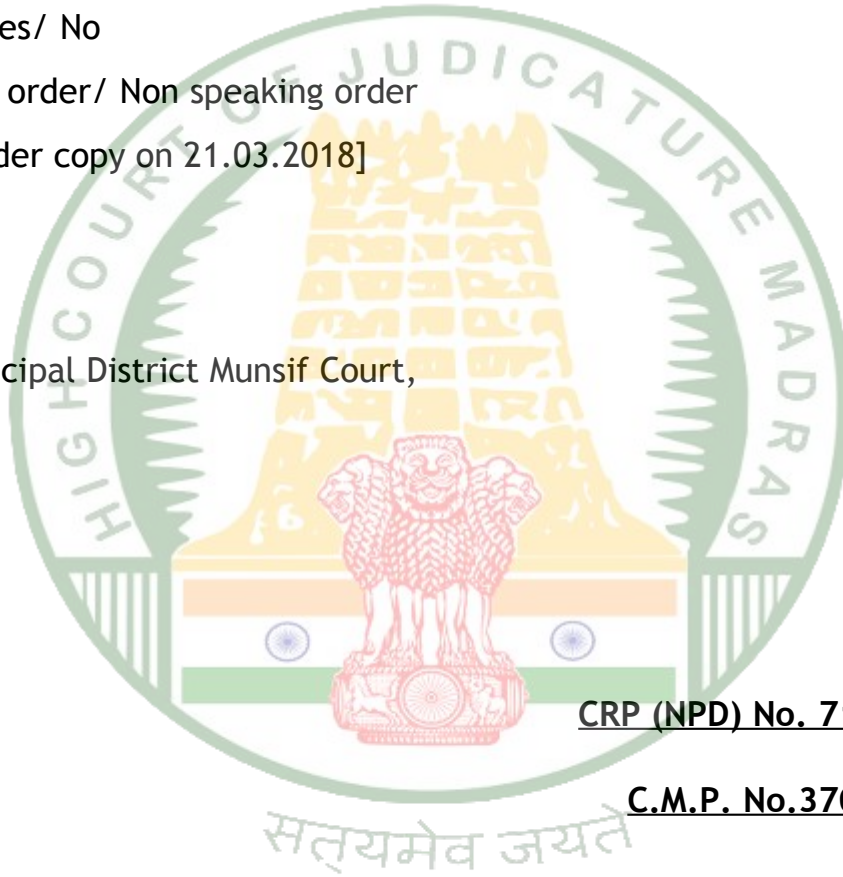
Index : Yes/ No

Speaking order/ Non speaking order

[Issue order copy on 21.03.2018]

avr

To
The Principal District Munsif Court,
Erode



CRP (NPD) No. 719 of 2016
and
C.M.P. No.3700 of 2016

WEB COPY

05.03.2018