

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP (NPD) No.948 of 2016

Subramanian

.. Petitioner/Plaintiff

-Vs-

1.Sundaramoorthy Asari

2.Rajavel

.. Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure challenging the order dated 14.12.2015 passed in I.A.No.1398 of 2015 in O.S.No.201 of 2009 on the file of Principal District Munsif Court, Ulundurpet dismissing to condone the delay of 356 days in filing restoration petition.

For Petitioner : Mr.J.Karthikeyan

For Respondents : Mr.N.Naganathan

* * * * *

ORDER

This Civil Revision Petition is filed challenging the order dated 14.12.2015 passed in I.A.No.1398 of 2015 in O.S.No.201 of 2009 on the file of Principal District Munsif Court, Ulundurpet dismissing to condone the delay of 356 days in filing restoration petition.

2. According to the petitioner/plaintiff, the petitioner/plaintiff filed the suit for declaration and permanent injunction. The aforesaid suit was dismissed for default. The petitioner was not appeared before the Court below on 14.12.2015. Subsequently the petitioner filed I.A.No.670 of 2012 for restoration of the suit and the same has been allowed. The said suit was dismissed for non-prosecution. Therefore, the petitioner has filed a petition in I.A.No.1398 of 2015 for restoration of the suit along with petition to condone the delay of 356 days in filing restoration petition. In the aforesaid suit the petitioner stated that he was suffered from jaundice and gone to Kerala for taking siddha treatment and he was absent, without considering the reasons stated in the affidavit, dismissed the instant application. Hence, prays this Court to set aside the order passed by the Court below.

3. In the counter statement filed by the respondents before the Court below by stating that, the reasons stated in the affidavit is false and vexatious. After hearing both the parties, the Court below has dismissed the application. Hence, the present Civil Revision Petition has been filed before this Court. The learned counsel appearing for the respondent further submitted that the Court below has rightly dismissed the application, when the petitioner has not stated sufficient reasons in the affidavit, to condone the delay of 356 days in filing restoration petition. Therefore, the Civil Revision Petition is liable to be dismissed.

4. By considering the rival submission of the parties, in the case of ***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, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

5.The Court below has stated that there is no sufficient reason in the affidavit. Taking into consideration of the nature of the length of the delay and providing an opportunity to the petitioner and in the light of the aforesaid decision of the Hon'ble Supreme Court, this Court is inclined to set aside the order passed by the court below, by considering the length of delay, this Court is inclined to impose heavy cost on the petitioner for allowing the application.

6.In fine, the impugned order passed by the Court below is set aside and the Civil Revision Petition is allowed, subject to payment of cost of Rs.10,000/- (Rupees Ten Thousand only) payable by the petitioner to the respondents, within a period of two weeks from the date of receipt of a copy of this order failing which the Civil Revision Petition stands dismissed.

7.Both the parties undertake to co-operate for the speedy disposal of the suit and the trial Court is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order.

8.Accordingly, the Civil Revision Petition is allowed with the

above directions. No costs.

06.03.2018

Speaking/Non-Speaking order

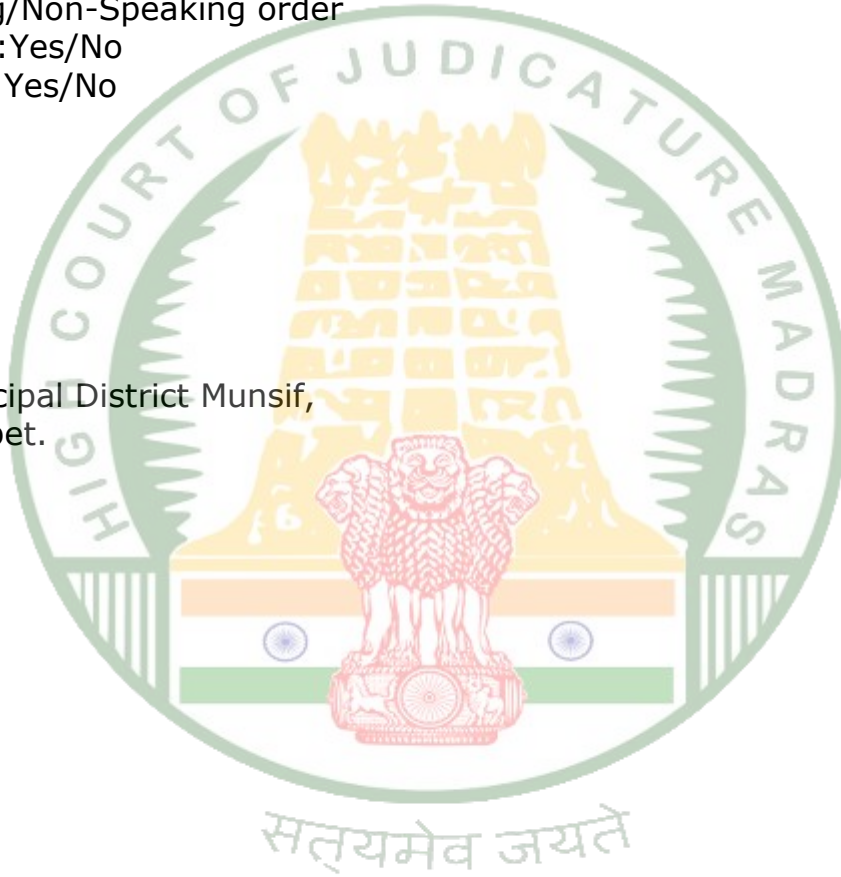
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To

The Principal District Munsif,
Ulundurpet.



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D. KRISHNAKUMAR J.,



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