



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2018

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(MD)No.381 of 2017 (PD)
and
C.M.P.(MD).No.1871 of 2017

1.Monikantan

2.Ganesh Kumar

3.Chitra

4.Rathika

5.Murugan

6.Rajakumar

7.Ramkumar

8.Remya

.. Petitioners

Vs.

Viswam @ Unni

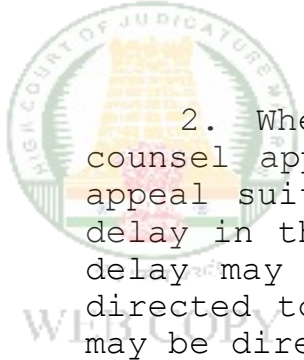
.. Respondent

PRAYER: Petition filed under Section 115 of C.P.C., against the fair and decreetal order dated 03.08.2016 passed in I.A.No.85 of 2013 in C.M.A.(SR).No.7512 of 2012 by the learned District Judge, Kanyakumari District at Nagercoil.

For Petitioners : Ms.J.Anandhavalli
For respondent : Mr.K.Sreekumaran Nair

ORDER

This civil revision petition has been filed by the revision petitioner challenging the order dated 03.08.2016 passed in I.A.No.85 of 2013 in C.M.A.(SR)No.7512 of 2012, by the learned District Judge, Kanyakumari District at Nagercoil, whereby and whereunder the petition filed by the revision petitioner for condoning the delay of 134 days in filing the Civil Miscellaneous Appeal against the order of rejection of plaint was dismissed holding that as against the order of rejection of plaint, only regular appeal will lie and therefore, this application is not maintainable.



2. When the matter came up for hearing today, the learned counsel appearing for the respondent fairly submitted that as the appeal suit will lie before the same Court, in order to avoid the delay in the process, this revision petition may be allowed and the delay may be condoned and the Civil Miscellaneous Appeal may be directed to convert as Appeal Suit and the main appeal suit itself may be directed to dispose of within a stipulated period.

3. As rightly held by the Court below, only a regular appeal has to be filed against the rejection of plaint and the civil miscellaneous appeal is not maintainable and therefore, the delay petition cannot be maintained. Considering the submissions of the learned counsel for both sides, this Court is inclined to issue the following orders:

The order impugned in this petition is set aside and the delay is condoned. The concerned first appellate Court is directed to convert the Civil Miscellaneous Appeal as Appeal Suit, if it is otherwise in order and dispose of the appeal on merits and in accordance with law, within a period of three months from the date of receipt of copy of this order. Both the parties are directed to cooperate with the Court below.

4. This civil revision petition is accordingly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The District Judge,
Kanyakumari District
at Nagercoil.

2. The Sub Judge,
Kuzhuithurai.

+1CC TO M/S.J.ANANDHAVALI, ADVOCATE, SR NO.50451

C.R.P. (MD) No.381 of 2017 (PD)
21.02.2018

gcg

MS/GT/SAR-2/20.03.2018/2P.4C