

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P(NPD)No.1051 of 2008

and

M.P.No.1 of 2008

1. Govindasamy Gounder
2. Kulanthasamy
3. Parvathi
4. Aruchamy

.. Petitioners

Vs.

1. Palanisamy Gounder
 2. Muthusamy Gounder
 3. Palanisamy Gounder
 4. Ramasamy Gounder
 5. Subramani
 6. Ramasamy
- (6th respondent called absent, hence given up)

.. Respondents

PRAYER: Civil Revision Petition filed under Article 115 of the Civil Procedure Code, against the fair and final order, dated 10.09.2007, made in I.A.No.65 of 2007, in O.S.No.237 of 2003 on the file of the District Munsif Court, Kangayem, Erode District.

For Petitioners	: Mr.C.Saravanan
For R1 to R3 & R5	: No appearance
For R4	: Refused
For R6	: Given up

ORDER

This Civil Revision Petition has been filed as against the order of the District Munsif Court, Kangayam, Erode District, in I.A.No.65 of 2007 in O.S.No.237 of 2003 dated 10.09.2007, wherein the learned District Munsif dismissed the application filed by the Revision Petitioner to condone the delay of 728 days in setting aside the exparte decree.

2. The suit in O.S.No.237 of 2003 was filed for declaration and injunction restraining the defendants from interfering with the common pathway. The Revision Petitioner has not filed his written statement despite his appearance before the Trial Court. Thereafter, as per the order passed in I.A.No.893 of 2004, a further time was granted by the Trial Court and the matter was adjourned to 13.08.2004. Again on 16.09.2004, the petitioner filed an application for adjournment and got the adjournment till 28.09.2004. Again the matter was adjourned on 04.10.2004. Despite several adjournments granted by this Court, the Revision Petitioner has not filed his written statement. Therefore, he

was set exparte on 15.10.2004. Thereafter the petitioner has filed an application on 16.11.2006 for condoning the delay of 728 days on the ground that he could not contact his advocate and he was suffering from jaundice and sought to condone the delay of 728 days.

3. The Revision Petitioner was examined by the Trial Judge. The Trial Judge after considering his evidence, which was contrary to the application, dismissed the application filed by the petitioner. Aggrieved by the same, the present Civil Revision Petition has been filed.

4. The learned counsel appearing for the Revision Petitioner would submit that unless the delay is condoned, he will be put into serious prejudice and his substantial right would be affected. Accordingly, prays for allowing this Revision.

5. I have perused the entire affidavit filed by the petitioner before the Trial Court to set aside the exparte decree. The Trial Court in its consideration of the contradicting stand taken by the petitioner in

his evidence and also in the affidavit, found the reasons stated therein was not sufficient and there is no sufficient cause to condone the huge delay of 728 days. No doubt the sufficient cause has to be given liberal approach, at the same time, there must be a reasonable grounds to exercise the discretion under Section 5 of the Limitation Act 1963, as a matter of right, delay cannot be condoned.

6. The contention of the petitioner is that due to his illness he was not able to file an application to set aside the ex parte decree within the prescribed time resulting in delay. The Trial Court considered his evidence and his affidavit arrived at a conclusion that the reason assigned in the petition is not correct and there is no sufficient cause.

7. This Court also perused the order in the manner where several adjournments were granted to the petitioner for filing his written statement. Despite several opportunities, the written statement has not been filed by the petitioner. Hence, this Court do not find any reason to condone such huge delay. The Revision Petition lacks merit, accordingly, the same stands dismissed.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.02.2019

Index: Yes/No
Speaking/Non-Speaking
ssi

To

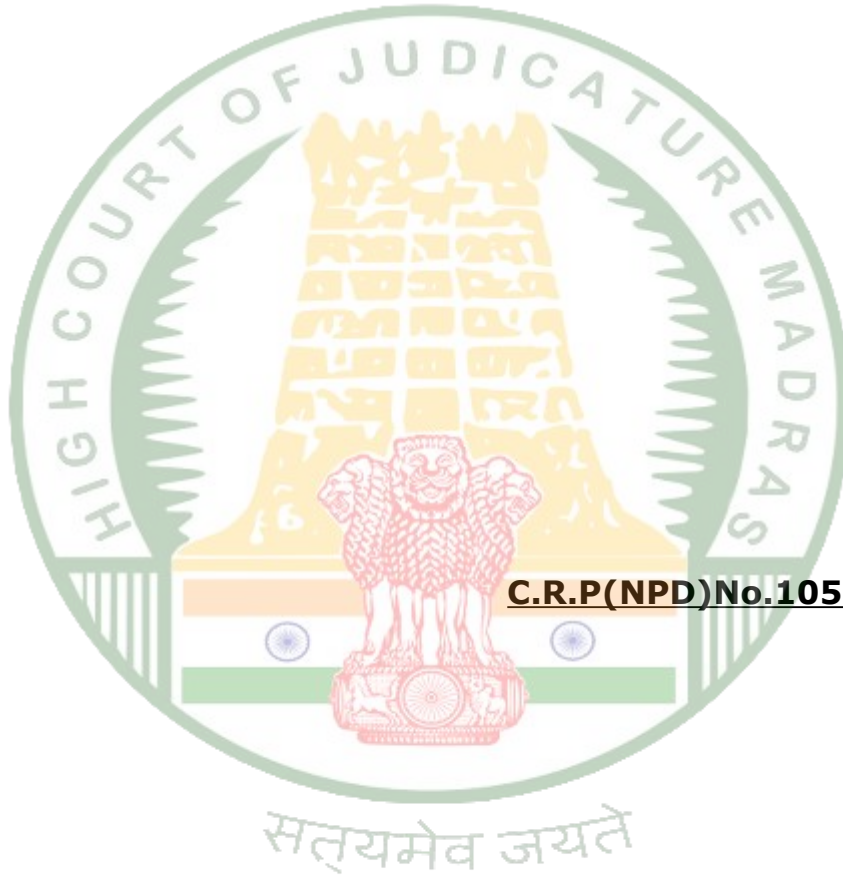
1. The District Munsif Court, Kangayem, Erode District.
2. The Section Officer, VR Section, Madras High Court.



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N.SATHISH KUMAR, J.

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