

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD)Nos.1072 & 1073 of 2008 and
M.P.Nos.1 and 1 of 2008

Jayalakshmi Bai (Deceased
 Rep. by her legal heirs)

1.Jayakumari

2.Indira

3.Lalitha

..

Petitioners
 [in both CPRs]

versus

M.Balasubramanian

..

Respondent
 [in C.R.P.[NPD]No.1072 of 2008]

K.Venugopalraj

..

Respondent
 [in C.R.P.[NPD]No.1073 of 2008]

COMMON PRAYER: Civil Revision Petitions have been filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 24.01.2018 made in I.A.Nos.313 and 312 of 2008 in I.A.Nos.18506 and 19995 of 2006 in O.S.No.4899 of 1996 respectively on the file of the XII Assistant City Civil Court, Chennai.

For Petitioner : Mr.PL.Narayanan
 [in both CPRs]

For Respondent : Mr.N.Rajan
 [in both CPRs]

COMMON ORDER

These Civil Revision Petitions have been filed as against the common order dated 24.01.2018 made in I.A.Nos.313 and 312 of 2008 in I.A.Nos.18506 and 19995 of 2006 in O.S.No.4899 of 1996 respectively on the file of the XII Assistant City Civil Court, Chennai, declining to call for the respondents for cross-examination.

2. The suit has been originally filed for damages, the suit has been decreed and the defendants set *ex parte* and thereafter, they filed applications in I.A.Nos.18506 and 19995 of 2006 to set aside the *ex parte* with a delay of 1002 and 1025 days respectively and the said applications were allowed on the ground that the defendants have filed medical certificates issued by the Apollo Hospital.

3. Aggrieved over the same, the revision petitioners have filed applications in I.A.Nos.313 and 312 of 2008 to cross-examine the respondents and the said applications have been dismissed, as against which, the present Civil Revision Petitions are came to be filed by the petitioners.

4. I have heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents and also perused the materials available on record.

5. No doubt, the party has right to cross-examine the witness to unearth the certain truth, since the respondents have not tendered legal evidence, they have filed affidavits, I am of the view that the petitioners themselves not come before the Court to give oral evidence to substantiate

their allegations to condone the huge delay of 1002 and 1025 days and those aspects have not been taken note of by the trial Court. Merely filing of the medical certificate would not be sufficient and each delay has to be condoned on sufficient cause, since the delay is more than 1002 and 1025 days, the trial Court shall take note of all these facts, while deciding applications filed under Section 5 of the Limitation Act. Hence, the trial Court is directed to dispose of the applications filed by the respondents, on merits and in accordance with law, within a period of one month from the date of receipt of a copy of this order.

6. With these observations, this Civil Revision Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

28.02.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

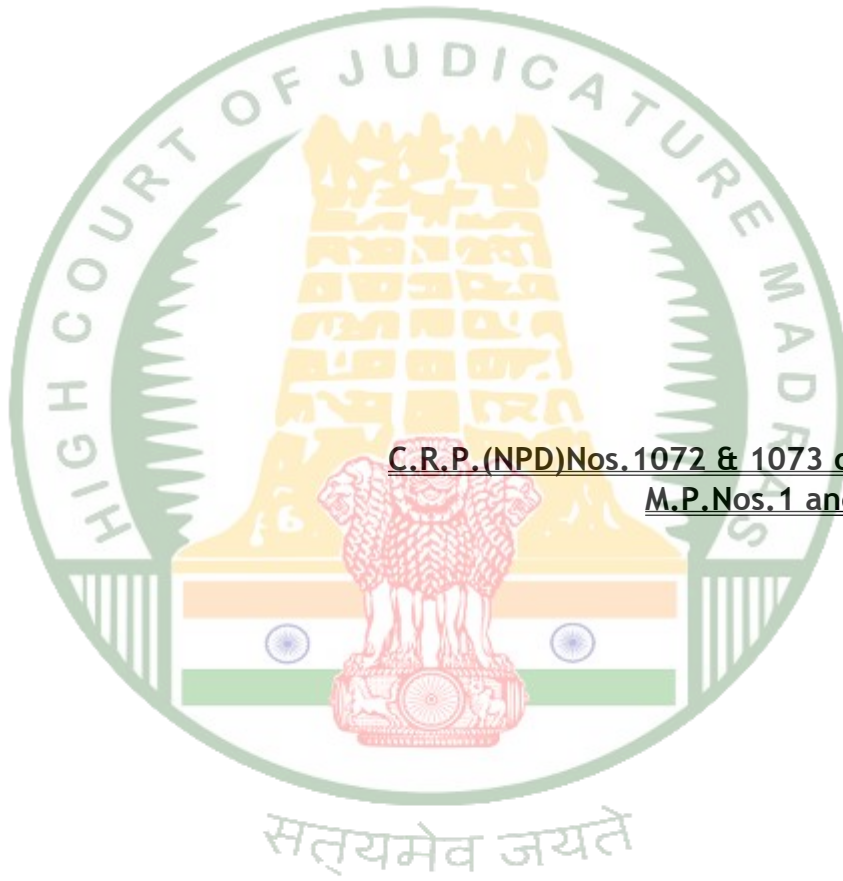
Note : **Issue Order Copy on 06.03.2019**

sri

To

The XII Assistant City Civil Court,
Chennai.

N.SATHISH KUMAR, J.,
sri



C.R.P.(NPD)Nos.1072 & 1073 of 2008 and
M.P.Nos.1 and 1 of 2008

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28.02.2019