

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

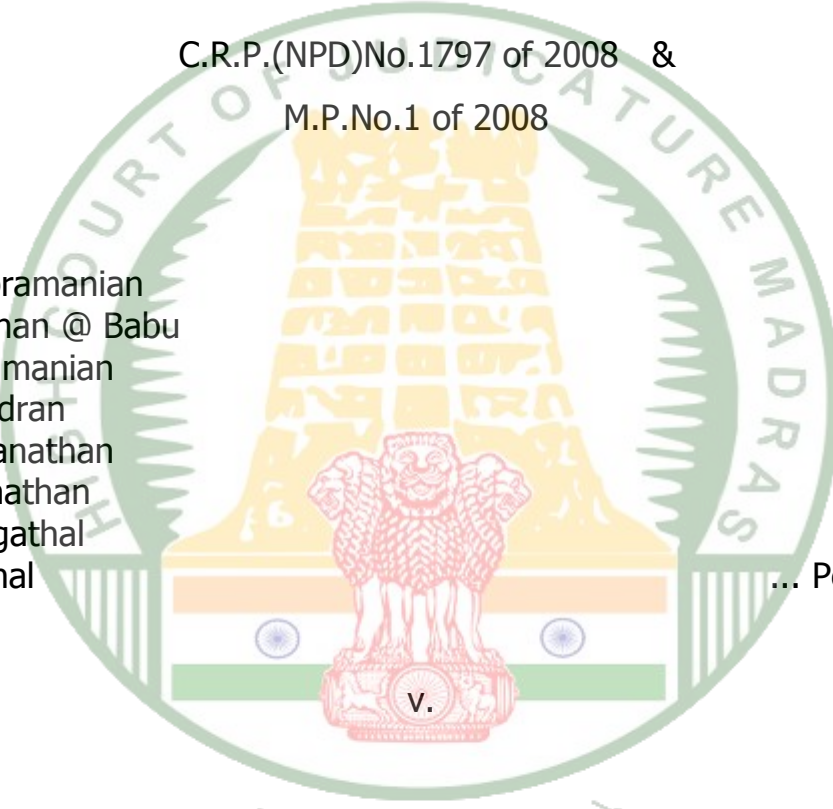
C.R.P.(NPD)No.1797 of 2008 &
M.P.No.1 of 2008

1.S.N.Subramanian
2.Pappannan @ Babu
3.N.Subramanian
4.S.Rajendran
5. S.Viswanathan
6.C.Loganathan
7. Mayangathal
8. Ramathal

... Petitioners

1.S. Ammasaikutty
2. S.Valliappan
3. P.Subramanian
4. K.Muthusamy
5. C.Kandasamy
6. M.Subramanian
7. M.Vellingiri
8. Rasavu @ M.Aruchunan

... Respondents



सत्यमेव जयते

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order dated 09.04.2008 passed in I.A.No.859 of 2006 in O.S.No.19 of 2004 on the file of District Munsif cum Judicial Magistrate at Avinashi.

For Petitioners : Mr.S. Mukunth
for M/s.Sarvabhauman Associates

For Respondents : No Appearance

ORDER

The defendants 1 and 2 in O.S.No.19 of 2004 on the file of the District Munsif cum Judicial Magistrate, Avinashi has filed the above Civil Revision Petition challenging the fair and decreetal order passed in I.A.No.859 of 2006 in O.S.No.19 of 2004.

2. The plaintiffs filed the suit in O.S.No.19 of 2004 for declaration and permanent injunction. Though the 1st defendant has engaged a counsel to appear on his behalf before the Trial Court, subsequently, he remained absent. However, the 2nd defendant remained absent right from the beginning and he was set *ex-parte* by the Trial Court. In these circumstances, the Trial Court passed an *ex-parte* decree

on 13.09.2004. Thereafter, the petitioners have filed an application in I.A.No.859 of 2006 to condone the delay of 680 days in filing the application to set aside the *ex-parte* decree.

3. In the affidavit filed in support of the application, the petitioners have stated that in the compromise talks held between the plaintiffs and the petitioners, the plaintiffs agreed to withdraw the suit and therefore, the petitioners/defendants 1 and 2 did not contest the suit, which resulted in an *ex-parte* decree dated 13.09.2004. Further, the petitioners have stated that they were under the *bona fide* impression that the plaintiffs would withdraw the suit, which they didn't.

4. When the 1st petitioner has engaged a counsel to appear on his behalf before the trial Court, he should have verified whether the plaintiffs have withdrawn the suit or not. The petitioners cannot keep silent for nearly two years for filing an application to set aside the *ex-parte* decree. Even assuming that the plaintiffs have agreed to withdraw the suit, the petitioners should have ascertained whether they have withdrawn the suit or not. The petitioners' inaction for nearly two years would only establish that they were not diligently prosecuting the matter.

5. The learned counsel appearing for the petitioners in support of his contentions, relied upon a judgment reported in **2013 (5) LW 20 [Esha Bhattacharjee v. Managing Committee Raghunathpur Nafar academy and others]** wherein the Hon'ble Supreme Court held that there should be a liberal, pragmatic, justice-oriented and 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.

6. However, the Apex Court, in the judgment reported in **2015 (1) SCC 680 [H.Dohil Constructions Company Private Ltd. v. Nahar Exports Limited and another]** has held that the failure of the petitioner in not showing due diligence in filing the appeal and the enormous time taken can only be construed in the absence of any valid explanation as gross negligence and lacks in bona fides displayed on the part of the petitioner. Further, the Apex Court held that in the absence of sufficient reason given by the petitioner, even the delay in representation should not be condoned.

7. The ratio laid down by the Apex Court in the judgment reported in **2015 (1) SCC 680 (cited supra)** squarely applies to the present case.

8. Since the petitioners have not given sufficient cause for the condonation of 680 days, the Trial Court had rightly dismissed the application.

9. In these circumstances, I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and the same is dismissed. No costs.

12.02.2019

Index : Yes/No

Speaking Order/Non-speaking Order

Rj

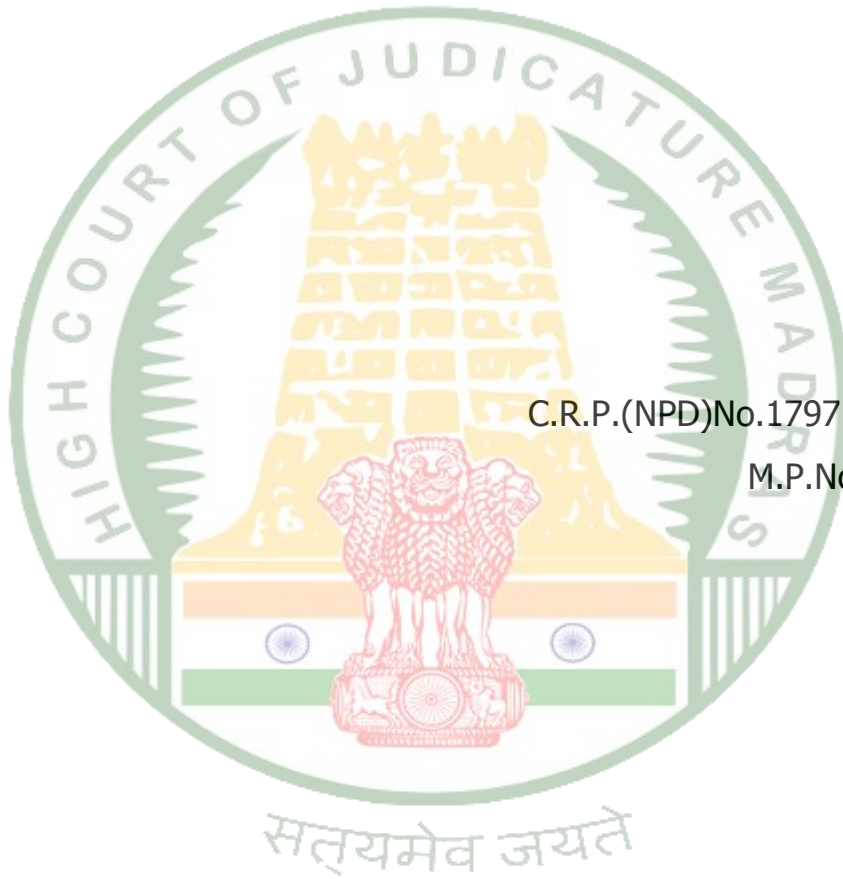
To

The District Munsif cum Judicial Magistrate
Avinashi

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M. DURAISWAMY,J.,

Rj



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