

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRP NPD No.1981 of 2009 and
M.P.No.1 of 2009 and
M.P.No.1 of 2013

S.K.Syed Ali ... Petitioner

Vs.

1. Mohammed Haneef Rowther
2. Aiyisa Bivi
3. Julaika Bivi ... Respondents

Prayer : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the orders dated 23.01.2009 passed in I.A.No.200 of 2006 in O.S.No.75 of 1998 by the Principal Subordinate Judge, Cuddalore.

For Revision Petitioners : Mr.J.Ramakrishnan

For 1st Respondent : Mr.V.Anand

For 2nd Respondent : Mr.D.Shivakumar

For 3rd Respondent : No appearance

ORDER

This revision petition has been filed against the orders passed by the trial court dismissing the application filed to condone the delay of 2 years 161 days in filing a petition to restore the petition in I.A.No.751 of 2003, which was dismissed on 25.07.2003.

2. The revision petitioner is the plaintiff in the original suit. It is the contention of the revision petitioner that the suit was dismissed for default on 20.02.2003 and to restore the same, he filed an application in I.A.No.751 of 2003, which was dismissed on 25.07.2003 for non service of notice to other side. Subsequently, he filed an application in I.A.No.200 of 2006 with a delay of 2 years 161 days to restore the said application in I.A.No.751 of 2003. It is the contention of the petitioner that, his counsel did not inform about the dismissal of the petition and now only he came to know about the fact. The respondents resisted the claim of the petitioner. The trial court dismissed the condone delay petition stating that the averments contained in the affidavit are contrary to the evidence of the petitioner and that as per his own admission, the petitioner came to know about

the dismissal of the petition in the year 2005, whereas, he filed the condoned delay petition only in the year 2006 and there is no sufficient reason to condone the huge delay. Against which, this revision has been filed.

3. The learned counsel appearing for the revision petitioner would contend that the advocate did not inform about the dismissal of the petition in I.A.No.751 of 2003 to the petitioner and that for the mistake committed by the counsel, the parties should not be penalised and hence, the delay ought to have been condoned by adopting liberal approach.

4. Per contra, the learned counsel appearing for the respondents contended that it is a third round of litigation and the suit filed for declaration is vexatious one. He further contended that to condone the huge delay, the petitioner has not given sufficient reasons and the delay has not been properly explained and hence, the trial court rightly dismissed the application.

5. It is to be noted that in the petition, the petitioner was examined as PW1. The trial court has observed the admission of the revision petitioner in his evidence to the effect that he came to know about the dismissal of the petition in the year 2005, whereas, he filed the petition in the year 2006 and that there is no sufficient reason adduced by him for such huge delay. It is curious to note that merely on the allegation that advocate did not inform about the dismissal of the petition, the same will not relieve the litigant from making enquiry and being vigilant about his case. The duty of the litigant will not end mere by handing over the case to the advocates. They are supposed to be vigilant to know about the status of the case.

6. Admittedly, the suit was dismissed for default on 20.02.2003. Thereafter, it appears that he filed an application in I.A.No.751 of 2003 to restore the suit. But that application was dismissed on 25.07.2003 for non service of notice to the respondent. Then the petitioner has filed an application to restore the said petition in I.A.No.751 of 2003 with a huge delay on the ground his counsel had not informed about the dismissal of the petition and now only he came to know about the fact and immediately he filed the petition to

condone the delay.

7. The petitioner himself was admitted in his evidence that he came to know about the dismissal of the petition in the year 2005 and he filed the petition only in the year 2006. On perusal of the petition, it appears that no sufficient cause to allow the petition. No doubt, if there is sufficient cause, liberal approach has to be adopted to establish substantial rights of the parties. To extend such liberal approach, there must be an explanation and sufficient reasons should have been given by the party to seek indulgence of the court to exercise its discretion. But, the averments of the petition and the evidence of the petitioner are contrary to the truth and there is no bonafide reasons in the petition to exercise the discretion of the court to condone the huge delay of 2 years 161 days in restore the application in I.A.751 of 2003. Hence, I do not find any reason to interfere with the orders passed by the trial court and the same is liable to be confirmed.

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8. In the result,

(i) The Civil Revision Petition is dismissed. No costs. The connected civil miscellaneous petitions are closed.

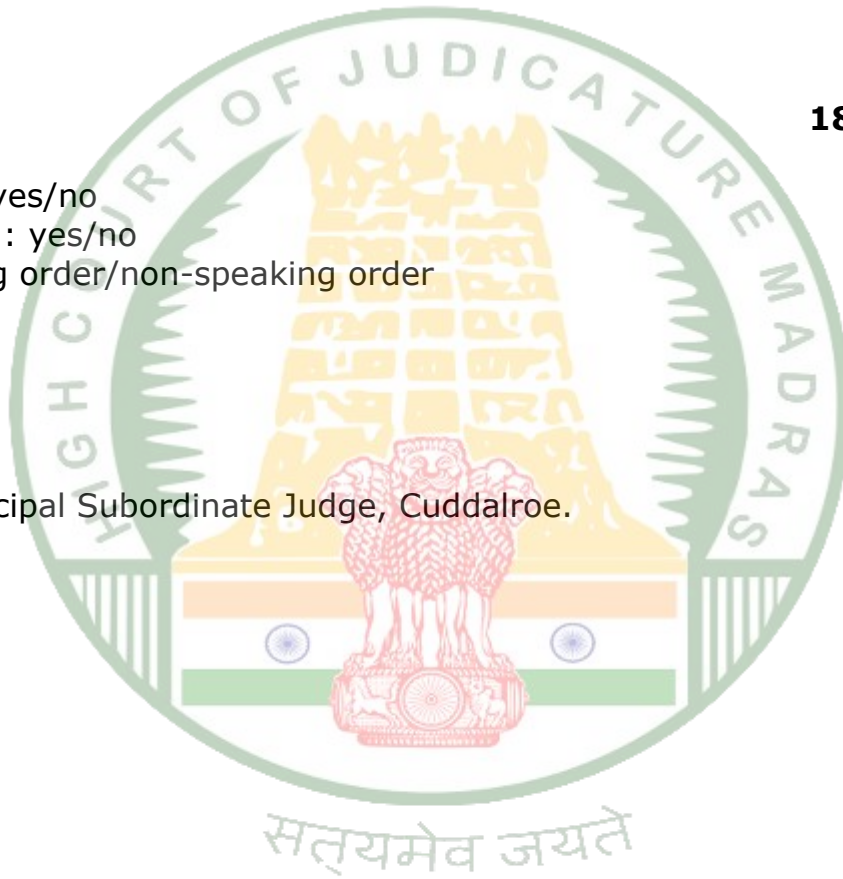
(ii) The orders passed by the trial court is confirmed.

18.03.2019

Index : yes/no
Internet : yes/no
Speaking order/non-speaking order
mst

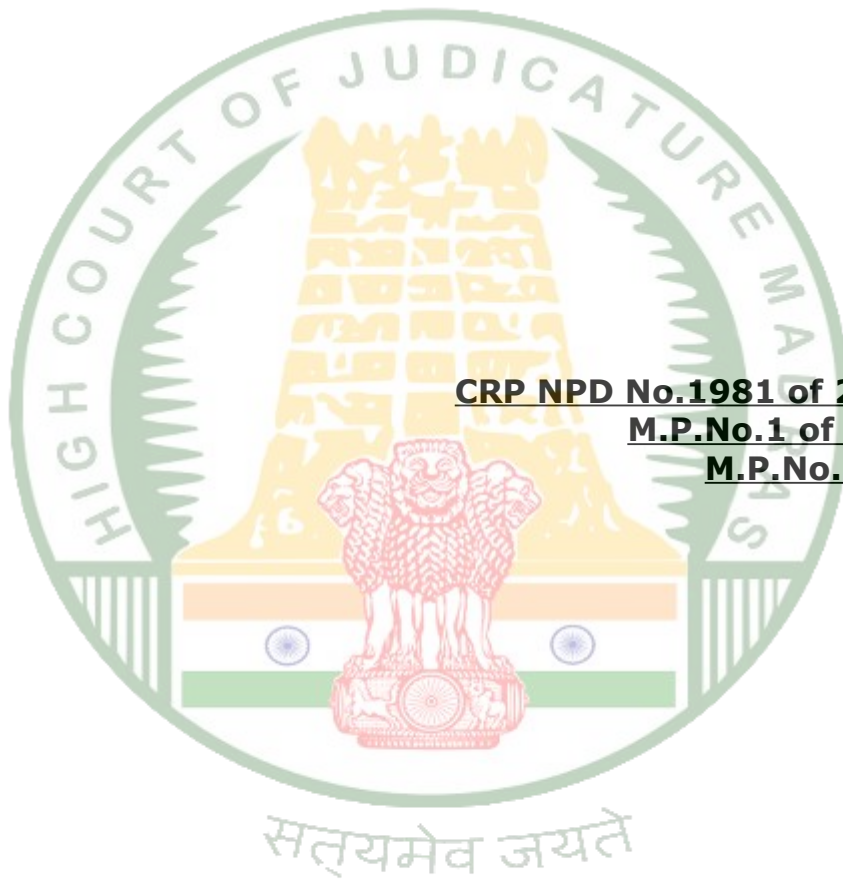
To

The Principal Subordinate Judge, Cuddalore.



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N.SATHISH KUMAR. J.,
mst



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