

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRP NPD No.3000 of 2009 and
M.P.No.1 of 2009

1. Kavitha
2. Dhanalakshmi ... Petitioners

Vs.

1. The Executive Engineer,
Tamil Nadu Housing Board,
Villupuram, Villupuram District.
2. Somu
3. S.Velmurugan ... Respondents

Prayer Civil Revision petition filed under Section 115 of the Code of Civil Procedure against the orders dated 16.07.2009 passed in I.A.No.183 of 2009 in O.S.No.510 of 2004 by the Additional District Munsif, Cuddalore.

For Revision Petitioners : Mr.T.S.Baskaran

For respondent No.1 & 2 : No appearance

ORDER

This revision petition has been filed against the order of the trial court, allowing the application, by condoning the delay of 822 days in filing the application to restore the suit, which was dismissed for default.

2. The revision petitioners are the defendants 2 and 3 in the original suit and the suit has been filed by the Executive Engineer, Tamil Nadu Housing Board, Villupuram for recovery of possession of the suit property free from the obstruction of the defendants. It is the case of the plaintiff that the property was acquired under the land acquisition proceedings in the year 1983 and with regard to the same, notification was published on 16.08.1983 and thereafter, under due process of law, the land was acquired. However, the plaintiff was prevented from taking possession of the property by the defendants and hence they have filed the suit seeking recovery of possession by removing the constructions put by the defendants. That suit was dismissed for default on 13.09.2006.

3. Thereafter, an application has been taken out by the plaintiff to condone the delay of 822 days in filing the petition to restore the suit. In the affidavit filed along with that petition, the plaintiff has stated that since the case records was not handed over to him by the Government Pleader, he did not appear before the court on the hearing date and hence, there is a delay of 822 days in filing the petition. This application was resisted by the respondents on the ground that there is no sufficient cause to condone the huge delay.

4. The trial court in its order, taking note of the fact that since the Government Pleader has not handed over the bundle, there was a delay of 822 days, exercised its discretion and condoned the delay by imposing costs. Against which the revision petitioners have come forward with the present revision petition.

5. The suit has been filed for recovery of possession of the property from the defendants, which was acquired under the Land Acquisition Proceedings and Notification was also published in notification No.11(2) housing 4636/1983 of Tamil Nadu Government Gazette dated 17.08.1983. The trial court has rightly exercised its

discretion. The limitation would not deprive the substantial right of the parties. When the trial court exercised its discretion, considering the substantial right of the parties, such discretion cannot be interfered by this court, unless it is perverse. Hence, I do not find any error or illegality on the orders passed by the trial court and the same does not warrant any interference by this court.

6. In the result,

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

(ii) The order of the trial court is confirmed.

10.04.2019

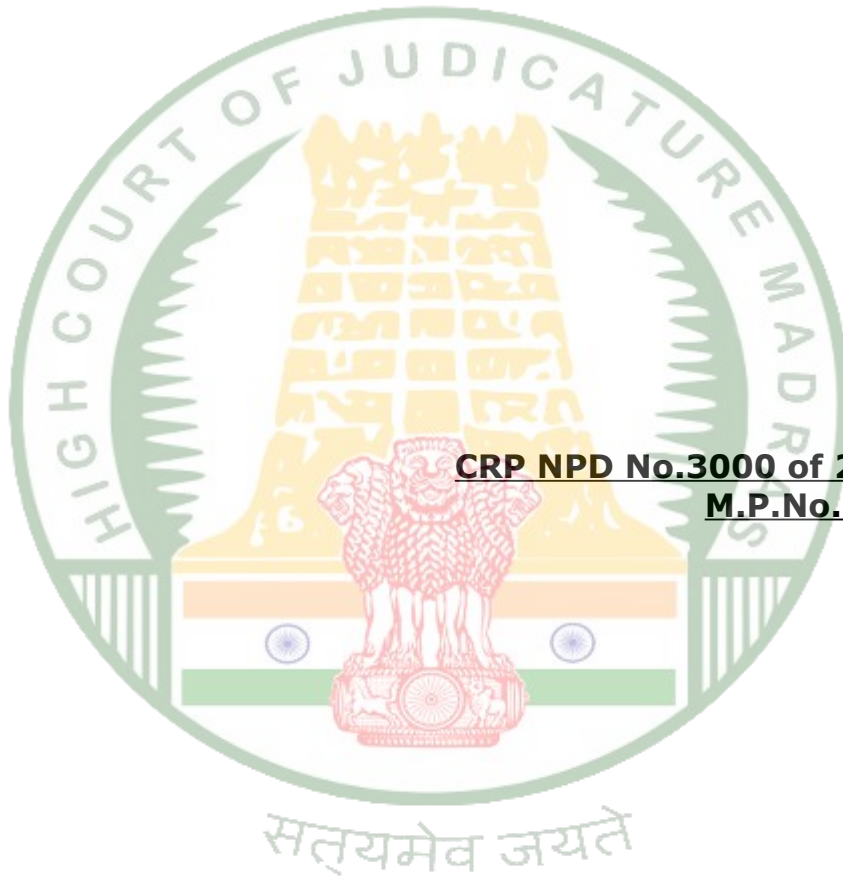
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To

The Additional District Munsif, Cuddalore.

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N.SATHISH KUMAR. J.,
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