

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) No.3531 of 2009

Mr.K.M.Natarajan

... Petitioner

Vs.

1. Mr.M.Rangarajan
2. Mr.M.Murugesan
3. Mr.A.T.Viswanathan
4. Mr.Ramasamy Gounder
5. Mr.P.Murugesan
6. Mr.Jegannathan
7. Mr.Murugesan
8. Mr.Alegasan
9. Mr.T.R.Muniappan

... Respondents

PRAYER: Civil Revision Petition filed under 227 of Constitution of India against the fair and decreetal Order passed in I.A.No.100 of 2008 in I.O.P.No.12 of 2006 on the file of the Sub Court, Bhavani, Erode District dated 11.08.2009.

For Petitioner : Ms.P.T.Ramadevi

For Respondents : Mr.S.Kaithamalaikumaran – R1
No appearance – R2 to R8

ORDER

This revision has been filed as against the Order of the trial Court dismissing the application filed for condonation of delay of 126 days in filing a petition for restoration of Insolvency Petition filed by the revision petitioner.

2. It is the case of the revision petitioner that on 15.04.2008, when the matter was posted for cross examination, he could not appear due to the death of his close relative. Therefore, the application was dismissed for default and immediately he had filed an application to restore the application. However, the above application has been misplaced in the Court. Therefore, there is a delay of 162 days in filing an application to restore the Insolvency Petition which was dismissed for default.

3. The trial Court taking note of the fact that the reasons stated in the application is not bonafide and also the conduct of the revision petitioner, dismissed the application.

4. The learned counsel for the revision petitioner has contended that the delay of 162 days has been properly explained and the trial Court has not considered the same.

5. The learned counsel for the respondent stoutly opposing the revision submitted that the petition is not a bonafide one and the petitioner has made false allegations in the affidavit. Therefore, he cannot seek for condonation of delay.

6. I have perused the Order passed by the trial Court. The trial Court threadbare analysed and found that the Insolvency Petition was originally posted on 7.02.2008 for cross examination of the revision petitioner. On that day, he was not present. Thereafter, on 22.2.2008, 04.3.2008, 05.3.2008, 19.3.2008 and 24.03.2008 and again on 03.04.2008, the revision petitioner has not appeared to submit himself for cross examination. Again, the case was adjourned to 16.04.2008. On that day also he did not appear to submit himself for cross examination. Therefore, the application was dismissed for default.

7. It is further to be noted that the main allegation of the petitioner is that he had immediately filed an application to restore the Insolvency Petition. On 21.04.2008 before the Court. However, the above petition was missing in the case bundle. Therefore, he has filed an application with a delay of 162 days. The trial Court found that the allegation of filing the application on 21.04.2008 is false and no such application has been filed before the Court. In fact, the trial Court has verified the Court Fee Register to find out whether the allegation of the

petitioner is true or not. On finding that no application has been filed as alleged by the petitioner, the trial Court found that there is no bonafide reasons in the application and the application is bereft of details and dismissed the application.

8. When the allegations found in the application is found to be false and making such false allegations only in order to play fraud on the Court, such person cannot seek equity in the Court of Law. Though the delay appears to be 162 days, the length of the delay is not a matter. But the reasons assigned in the application is relevant. When the reasons assigned in the application appears to be false and in fact, used the Court proceedings for such delay which is found to be false, I am of the view that the trial Court is right in exercising its discretion in dismissing the application and I do not find any infirmity in the Order passed by the trial Court.

9. Accordingly, this Civil Revision Petition is dismissed and the Order of the trial Court is confirmed. No cost.

19.02.2019

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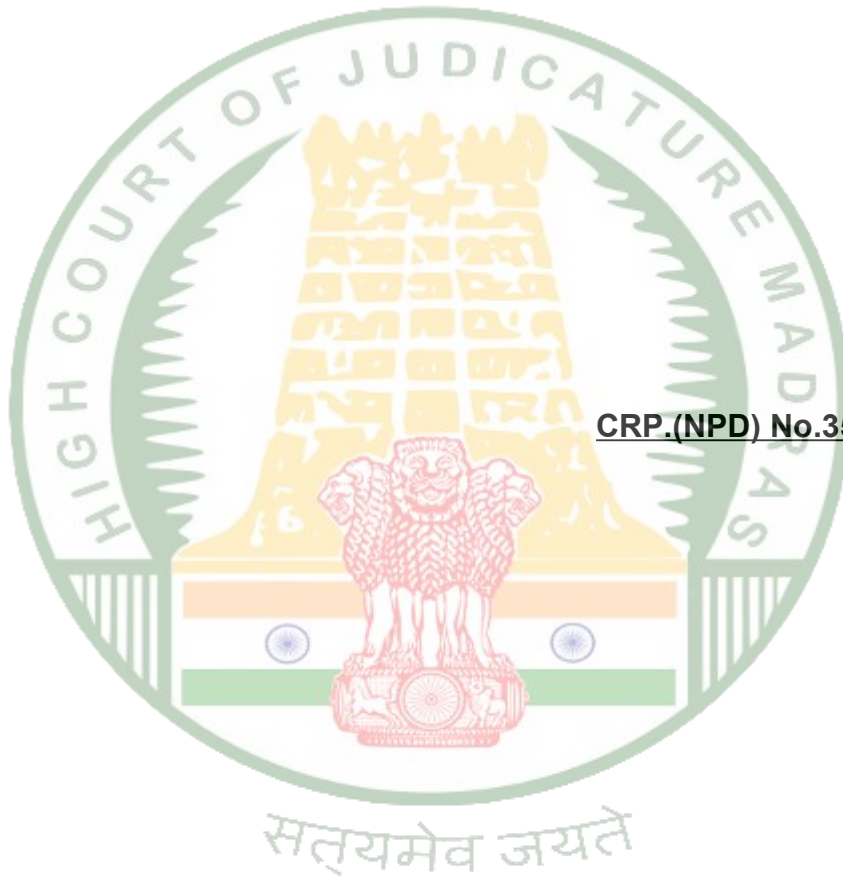
To

The Subordinate Judge,
Bhavani, Erode District.

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N.SATHISH KUMAR, J.

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