

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.02.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD)No.47 of 2010
and M.P.No.1 of 2010

Sowrirajan

..

Petitioner

versus

Kumar

..

Respondent

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the order dated 14.08.2009 made in I.A.No.1313 of 2008 in O.S.No.409 of 2005 on the file of the learned Principal District Munsif, Tirukoilur.

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.J.Ramakrishnan

ORDER

This Civil Revision Petition has been filed against the order dated 14.08.2009 made in I.A.No.1313 of 2008 in O.S.No.409 of 2005 on the file of the learned Principal District Munsif, Tirukoilur.

2. The respondent herein is the plaintiff has filed the suit in O.S.No.409 of 2005 for recovery of money. The defendant has infact admitted and filed written statement denying the pronote on the ground that the pronote is a forged one and there is no privity of contract. It appears that the petitioner [P.W.1] was examined in the chief examination, the learned counsel has not cross examined P.W.1 and hence, he was set *ex parte* on 24.03.2006.

3. It is the contention of the petitioner that the learned counsel has not informed him about the *ex parte* decree, in the meanwhile, he fell ill and suffered stroke and was taking treatment in various places, only at the time when the notice was served on him in Execution Proceedings, he came to understand that there was a huge delay of 844 days and belatedly, he has filed Interlocutory Application in I.A.No.1313 of 2008 to condone the delay of 844 days to file the petition under Order IX Rule 13 of the Code of Civil Procedure.

4. The petitioner himself was examined as P.W.1, on his side, he has exhibited 7 documents to show that he was all along under treatment from the year 2003 onwards. However, the trial Court has rejected those medical certificates on the ground that Doctors were not been examined, besides, the

trial Court has also noted that he was all along was not an inpatient and thereby, dismissed the said application.

5. Aggrieved over the above said order dated 14.08.2009, the revision petitioner is before this Court with the present Civil Revision Petition.

6. The learned counsel appearing for the revision petitioner would contend that the delay has been properly explained, despite the revision petitioner has produced the medical certificates, the trial Court simply ignored it. When the party shows sufficient cause, the trial Court ought to have exercised its discretion in his favour and hence, he prays for allowing this revision.

7. The learned counsel appearing for the respondent would contend that the petitioner came before the Court with false allegations and there was no sufficient cause and such huge delay cannot be condoned and hence, he prays for dismissal of this revision.

8. I have perused the order of the trial Court. It is the specific case of the petitioner that when the suit was posted for cross examination, his counsel has not informed and thereafter, he fell ill and suffered stroke and he took treatment in various places. In evidence, he has clearly spoken about the places where he has taken treatment and he has also produced the documents as Ex.P.1 to Ex.P.7. The parties are from rural background, they cannot expect medical details about the nature of the treatment and the manner, in which, he was treated by the Doctors. When the documents *prima facie* show that there is sufficient cause, the Court has to receive the documents and exercise its discretion liberally in favour of the party.

9. On perusal of the evidence and materials on the side of the petitioner makes it clear that he was under treatment in various places from 2003 to 2008 and not only treated on Allopathy Doctors, but also ayurvedic and siddha Doctors. The person, who suffers from stroke other than it normally practice of villagers to go for treatment like ayurvedic and siddha. When the petitioner has shown sufficient cause, the Court ought to

have considered the same and exercised its discretion liberally in favour of him. The Limitation Act is not to meant to destroy the rights of the parties. Therefore, I am of the view that one more opportunity should be given to the revision petitioner to agitate his rights on merits.

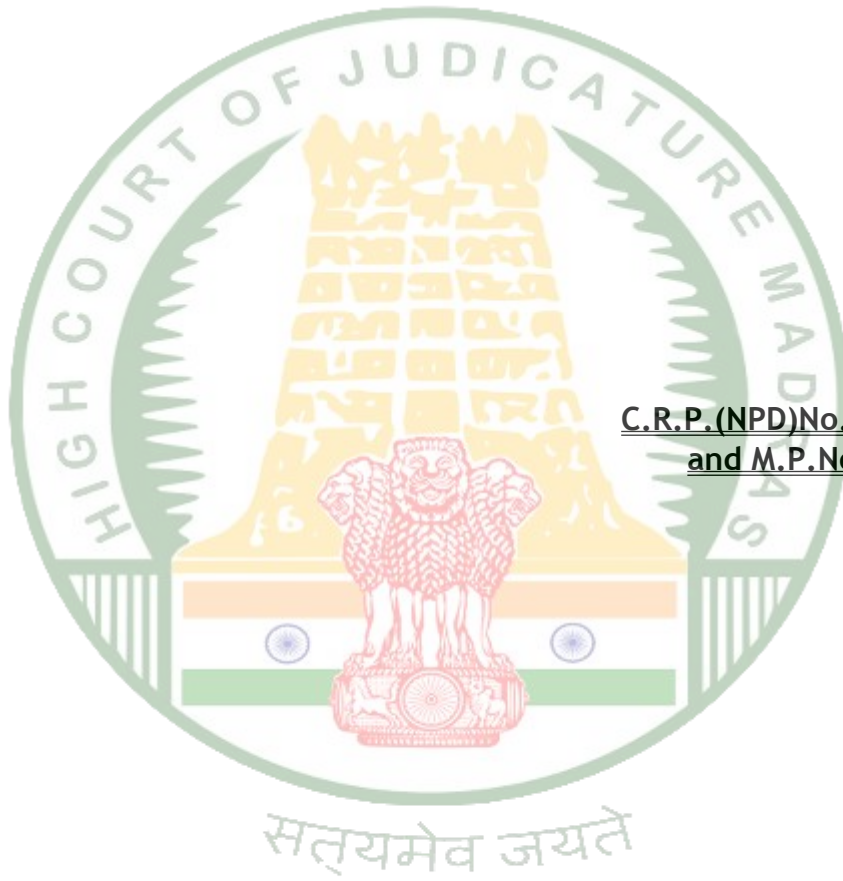
10. In the result, this Civil Revision Petition is allowed and the order of the trial Court passed in I.A.No.1313 of 2008 in O.S.No.409 of 2005 dated 14.08.2009 is hereby set aside, the delay of 844 days is condoned, subject to the payment of Rs.5,000/- [Rupees Five Thousand Only] payable to the respondent, on or before 15 days from the date of receipt of a copy of this order. The trial Court shall decide the application to be filed under Order IX Rule 13 of the Code of Civil Procedure on merits and thereafter, proceed the suit and dispose of the same, within a period of four months. Consequently, connected Miscellaneous Petition is closed. No costs.

21.02.2019

Speaking Order/Non Speaking Order
Index : Yes / No
Internet : Yes
sri

To
The Principal District Munsif,
Tirukoilur.

N.SATHISH KUMAR, J.,
sri



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