

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRP NPD No.219 of 2004 and
M.P.No.1877 of 2004

V.Krishnan ... Petitioner

Vs.

A.Manikandan ... Respondent

Prayer Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 21.10.2003 passed in I.A.No.608 of 2001 in O.S.No.329 of 2000 by the District Munsif, Polur, Thiruvannamalai District.

For Revision Petitioner : Mr.Nallathambi
for M/s A.Thiagarajan

O R D E R

This revision petition has been filed, challenging the order passed by the trial court, dismissing the application, filed to condone the delay of 179 days in filing the counter affidavit to the injunction petition.

2. The revision petitioner is the defendant in the original suit and the plaintiff had filed a suit for permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property on the basis of the certificate issued by the Village Administrative Officer and B memo receipts. The plaintiff had also filed an application in I.A.No.517 2000 in O.S.No.329 of 2000 seeking interim injunction. It appears that since the defendant had not filed counter affidavit to the said injunction petition, even after giving sufficient opportunities, on 16.03.2001, the injunction already granted on 14.11.2000 was made absolute. Hence, the revision petitioner had filed an application to condone the delay of 179 days in filing the counter affidavit to the injunction petition, on the ground that since he had suffered from jaundice and had taken Sidha treatment, he could not contact his advocate and there occurred a delay of 179 days

and hence, the same may be condoned. The trial court has dismissed the said application on the ground that no material evidence was adduced for such treatment. Against which, the revision petitioner has come up with this revision petition.

3. Though the name of the respondent is printed in the cause list, none appeared today. Heard the learned counsel appearing for the revision petitioner.

4. Ofcourse, each and every day delay has to be explained in the condoned delay petition. But, at the same time, the court should adopt liberal approach, keeping in mind the substantial rights of the parties. The petitioner himself had given oral evidence explaining the nature of treatment taken by him in Sidha. That being the position, it cannot be expected from the parties coming from rural back ground to give minute details of the treatment. Therefore, I am of the view that in order to give one more chance to the revision petitioner and to establish his substantial rights on merits, the delay has to be condoned, subject to the payment of costs.

5. Accordingly, the revision petition is allowed subject to the payment of costs of Rs.10,000/- by the revision petitioner to the respondent on or before 28.06.2019 either by way of direct payment or by way of deposit before the trial court. In the event of failure to make payment or deposit, the revision petition shall stand dismissed. However, in the event of direct payment or deposit made by the revision petitioner, the trial court shall decide the application under Order XXXIX Rule 1 & 2 of CPC and dispose the same on merits within one month from 28.06.2019 and dispose the suit within four months from the date of disposal of the injunction petition.

6. With the above observation, this revision petition is disposed of. No costs. The connected civil miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

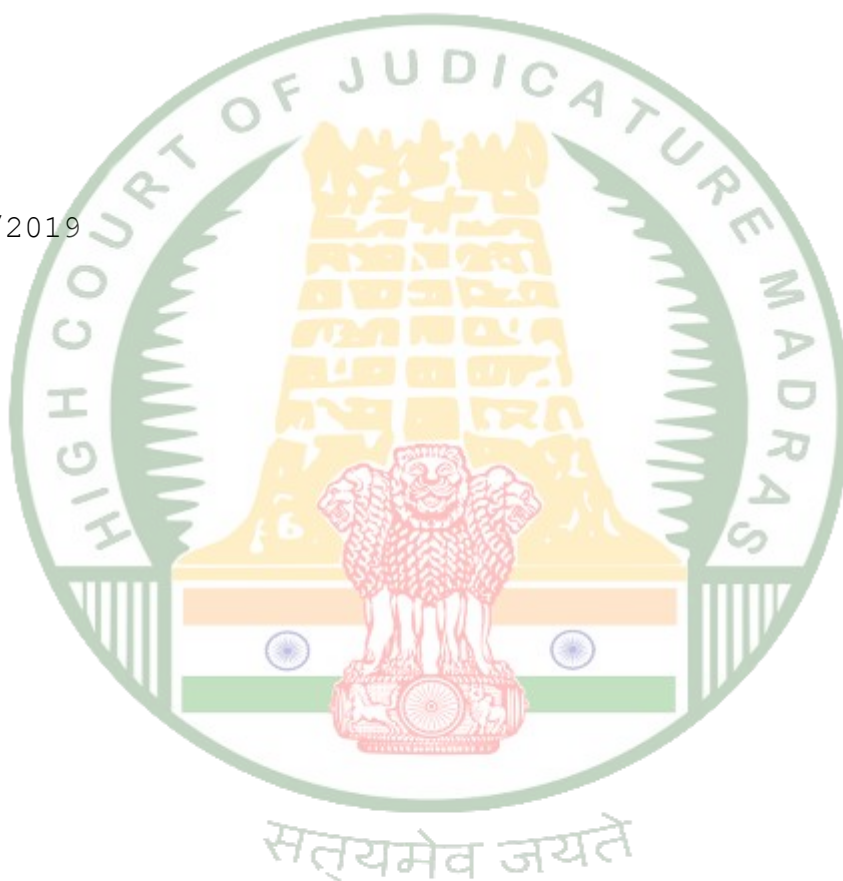
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To

The District Munsif, Polur,
Thiruvannamalai District.

CRP NPD No.219 of 2004 and
M.P.No.1877 of 2004

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