

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(NPD).No.1012 of 2015
and M.P.No.1 of 2015

P.Selvaraj

.. Petitioner

vs.

B.Askar Ali

.. Respondent

Prayer.: Civil Revision petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 13.11.2013 made in I.A.No.84 of 2012 in O.S.No.2 of 2011 on the file of the Principal District Court, Perambalur.

For Petitioner : Mr.A.S.Baalaji

For Respondents : Mr.V.Ragavachari

ORDER

The present Civil Revision Petition has been filed to set aside the fair and decretal order dated 13.11.2013 made in I.A.No.84 of 2012 in O.S.No.2 of 2011 on the file of the Principal District Court, Perambalur.

2. By the impugned order, the trial Court has dismissed the application filed under Section 5 of the Limitation Act to condone the delay of 45 days in filing the petition under Order IX Rule 13 of C.P.C. to set aside the exparte decree passed on 31.08.2012 against the petitioner. Since the petitioner was unable to appear before the trial court for cross examination of P.W.1, on 31.08.2012, the petitioner was called absent and the case was posted for Judgment on 04.09.2012.

3. The Court has refused to condone the delay on the ground that the petitioner has not given sufficient reason for condoning the delay. Generally the exparte decree in question was passed on 04.09.2012 and not on 31.08.2012 and the days calculated was not correct and since the supporting affidavit filed by the petitioner is self explanatory that lacks details and it is very bald as to from which date onwards he was suffering from Jaundice and the period of treatment, what type of country medicine he took for Jaundice and at whose prescription or guidance etc. The explanation has been found to be identical.

4. Though the petitioner has not given particulars of ailment and treatment, nevertheless the Court has unfair to entertain the defendants to condone the delay of 48 days. The petitioner has also participated in the trial and had not filed any written statement.

5. In view of the fact that the suit is of the year 2012, the delay and disposal of the suit is primarily on account of the petitioner has not filed better affidavit before the trial Court. Therefore, the balance of interest of both the parties has to be adjudicated.

6. Consequently, the petitioner is directed to pay a sum of Rs.10,000/- to the respondent/plaintiff within a period of four weeks from the date of receipt of a copy of this order and the same shall be deposited to the credit of the above suit and thereafter, notice shall be served on the respondent/plaintiff.

7. The Principal District Judge, Perambalur is directed to complete the trial based on a recent Judgment and decree within a period of six months thereafter.

8. The Civil Revision Petition is allowed with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

07.06.2019

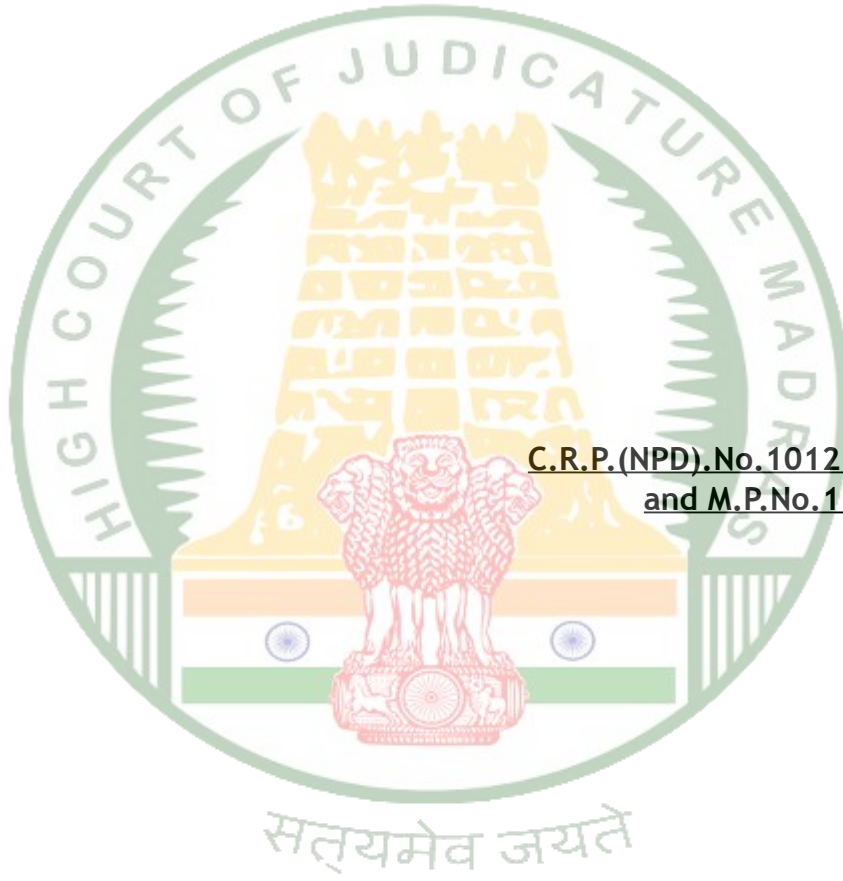
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To

<http://www.judis-pic.in>
The Principal District Court, Perambalur.

C.SARAVANAN,J.

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