

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE **R.PONGIAPPAN**

C.R.P.NPD.No.1724 of 2012
and M.P.No.1 of 2012

1. Ganesan
2. Umapathy
3. Ramamurthy

.... Petitioners

Vs

1. Senthamarai Kannan
2. Ragupathy

.... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 23.12.2011 made in I.A.No.1283 of 2011 in O.S.No.428 of 2002 on the file of the Additional District Munsif Court, Cuddalore.

For Petitioners : Mr.J.Jayan
For Mr.D.Ravichander

For Respondents : No appearance

ORDER

Aggrieved over the order dated 23.12.2011 made in I.A.No.1283 of 2011 in O.S.No.428 of 2002 on the file of the Additional District Munsif Court, Cuddalore, the petitioners, who are the defendants in the above referred suit filed this Civil Revision Petition.

2. Before the trial Court, the first respondent herein filed a suit in

O.S.No.428 of 2002, as against the petitioners and the second respondent for the relief of permanent injunction restraining the petitioners and the second respondent from interfering with the first respondent/plaintiff's peaceful possession and enjoyment of the suit property. When the time the suit was filed, the second respondent in this Civil Revision Petition was a minor. After attaining the majority, the first respondent/plaintiff filed an application in I.A.No.1333 of 2009 to declare the second respondent as a major.

3. The learned Additional District Munsif, Cuddalore allowed the application filed by the first respondent and subsequently on 07.10.2009, the first respondent herein filed an application under Order 6 Rule 17 of C.P.C., for amending the plaint. However, the Registry attached with the Court below found some defects in that amendment petition and returned the same for ratifying the defects. After receiving the returned application, the first respondent/plaintiff has failed to re-present the same within the time stipulated by the Court below, after rectifying the defects pointed out by the Registry. In the mean time, the suit filed by the first defendant was dismissed for default on 03.11.2009.

4. After passing an order of dismissal, the first respondent/plaintiff filed an application in I.A.No.1284 of 2009 under Order 9 Rule 9 of C.P.C., to restore the suit along with the application in I.A.No.1283 of 2009

for condoning the delay in representation. The said application in I.A.No.1283 of 2009 has also been returned by the Registry attached with the Court below for want of correct days of delay and for giving notice to the other side. The learned counsel, who appeared on behalf of the first respondent/plaintiff before the Court below, had re-presented the said application by mentioning as "no notice to the other side should be required for condoning the delay in representation". However, the said application has been again and again returned up to 25.11.2011 and finally on 23.12.2011, the delay was excused without mentioning any reason. Aggrieved over the said order, the petitioners are before this Court with a prayer to set aside the order dated 23.12.2011.

5. The learned counsel appearing for the petitioners would contend that without issuing notice to the petitioners/defendants the learned Additional District Munsif, Cuddalore, allowed the application filed by the first respondent/plaintiff, for condoning the delay in representation. It is the further contention of the petitioners that the learned Additional District Munsif, Cuddalore, condoned the representation delay, without assigning any reasons, which is erroneous in law and the same should be corrected by way of allowing this Civil Revision Petition.

6. Considered the arguments advanced by the learned counsel

appearing for the petitioners. Nobody has appeared on the side the respondents.

7. To decide the case, it is necessary to go through Order 7 Rule 10(4)(a) of C.P.C., which reads as follows :-

"10(4)(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and "

So according to the said provision, it is not necessary for the first respondent/plaintiff to serve the notice to the petitioners/defendants for condoning the delay in representation of the plaint or petition by the Court concerned. So in this aspect, this Court cannot find any illegality committed by the learned Additional District Munsif, Cuddalore. Therefore, I am of the considered opinion that the impugned order dated 23.12.2011 made in I.A.No.1283 of 2011 in O.S.No.428 of 2002, condoning the delay of 430 days in representation, is found correct and there is no material irregularity in the order passed by the learned Additional District Munsif, Cuddalore, and the same is confirmed.

8. On going through the other aspects found in this case, it is

pertinent to note that the suit pertains to this Civil Revision Petition has been filed in the year 2002 and subsequently, the impugned order has been passed in the year 2011 and thereafter, no progress in this case. Therefore, it is necessary to issue some directions to the Court below to dispose of the suit within the stipulated period. The learned Additional District Munsif, Cuddalore, is directed to decide the application filed by the first respondent/plaintiff under Order 9 Rule 9 of C.P.C. for restoring the suit, within the period of two weeks from the date of the receipt of a copy of this Order and if the suit is restored on file, the learned Munsif is further directed to dispose of the suit in O.S.No.428 of 2002, within a period of four months from the date of restoration of the suit.

9. With the above directions, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No cost.

18.11.2019

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order

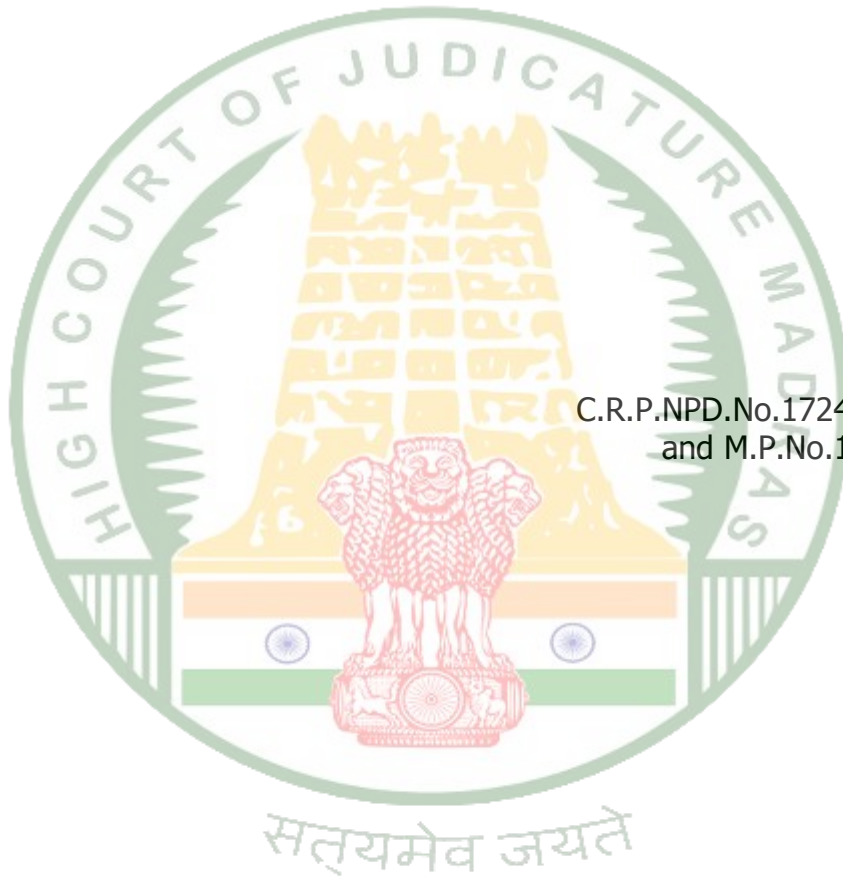
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To

The Additional District Munsif Court,
Cuddalore.

R.PONGIAPPAN, J.

rts



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