

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP.NPD.No.4091 of 2012
and
MP.No.1 of 2012

N.K.Munshi

... Petitioner

vs.

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.

2.The City Engineer,
Town Planning,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.

3.The Assistant Engineer,
Corporation of Chennai,
Zone IX, Saidapet,
Chennai - 600 015.

4.Pushpavathy Kuppusamy

5.Rajabathar

6.Lakshmi

... Respondents

PRAYER: Civil Revision Petition filed under under Section 115 of the Code of Civil Procedure against the fair and decreetal orders dated 17.09.2012 in IA.No.12337 of 2010 in OS.No.8360 of 2005 on the file of the XVIII Assistant City Civil Court, Chennai.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.V.C.Selvasekaran for R1
Mr.S.Muthukumaran for R4
No appearance for R2, R3, R5 and R6

ORDER

The revision petitioner is the plaintiff in OS.No.8360 of 2005 on the file of the XVIII Assistant Judge, City Civil Court, Chennai. He filed the suit for a declaration that the show cause notice issued by the Commissioner, Corporation of Chennai, dated 15.11.2005 is illegal and non-est in the eye of law and also for a permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property described in the plaint as Plot No.99, Door No.13, South Dhandapani Street, T.Nagar, Chennai - 600 017.

2. The first defendant filed his written statement and the defendants 2 and 3 did not file any written statement. Subsequently, the plaintiff filed an application in IA.No.10153 of 2006 under Order I Rule 10 of

the Code of Civil Procedure praying to implead the defendants 4 to 6 in the suit in OS.No. 8360 of 2005 on the file of the XVIII Assistant Judge, City Civil Court, Chennai. The said application was allowed on 29.08.2008. However, the plaintiff did not implead all those parties as defendants in the suit and hence, the learned XVIII Assistant Judge, City Civil Court, Chennai dismissed the suit in OS.No.8360 of 2005 on 10.08.2009.

3. The revision petitioner / plaintiff thereafter filed a petition in IA.No.12337 of 2010 in OS.No.8360 of 2005 on the file of the XVIII Assistant Judge, City Civil Court, Chennai to set aside the order of dismissal passed by the court on 10.08.2009 along with a petition under Section 5 of the Limitation Act praying to condone the delay of 298 days in filing the petition to set aside the order of dismissal. The fourth respondent alone contested the said petition and the learned XVIII Assistant Judge, City Civil Court, Chennai vide his fair and decreetal orders dated 17.09.2012, dismissed the petition mainly on the ground that the plaintiff was not diligent in prosecuting his case and that he has not also explained each and every day's delay. Aggrieved over the same, the present Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure.

4. Mr.V.Raghavachari, learned counsel appearing for the revision petitioner contended that the trial court has wrongly dismissed the suit in OS.No.8360 of 2005, merely because the plaintiff did not implead the proposed respondents. He would further contend that the learned XVIII Assistant Judge, City Civil Court, Chennai in IA.No.12337 of 2010 filed under Section 5 of the Limitation Act had observed that since the plaintiff did not explain each and every day's delay, the petition filed by him cannot be allowed.

5. No appearance on behalf of the respondents 2, 3 and 5. The learned counsel appearing for the fourth respondent contended that the fourth respondent has already sold the property and therefore he is not a necessary party to the suit.

6. A perusal of the records shows that the main reason stated in the affidavit filed along with the petition in IA.No.12337 of 2010 is that since the plaintiff was indisposed, he could not take steps immediately after passing of the order in IA.No.10153 of 2006. It is further contended by the plaintiff that he was not able to contact his counsel on record. It is relevant

to point out that refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. It is also relevant to point out that every day's delay must be explained does not mean that pedantic approach should be made. The doctrine must be applied in a pragmatic manner. The revision petitioner has contended that he was not able to pursue the matter since he was indisposed. However, the trial court has not taken this aspect into consideration and dismissed the petition itself. Moreover, the dismissal of the suit in OS.No. 8360 of 2005 on the basis that the plaintiff did not implead the proposed parties as defendants 4 to 6 also is erroneous. In the facts and circumstances, this is a fit case where interference is warranted by this court.

7. Accordingly, the Civil Revision Petition is allowed. No costs.

Consequently, the connected Miscellaneous Petition is closed.

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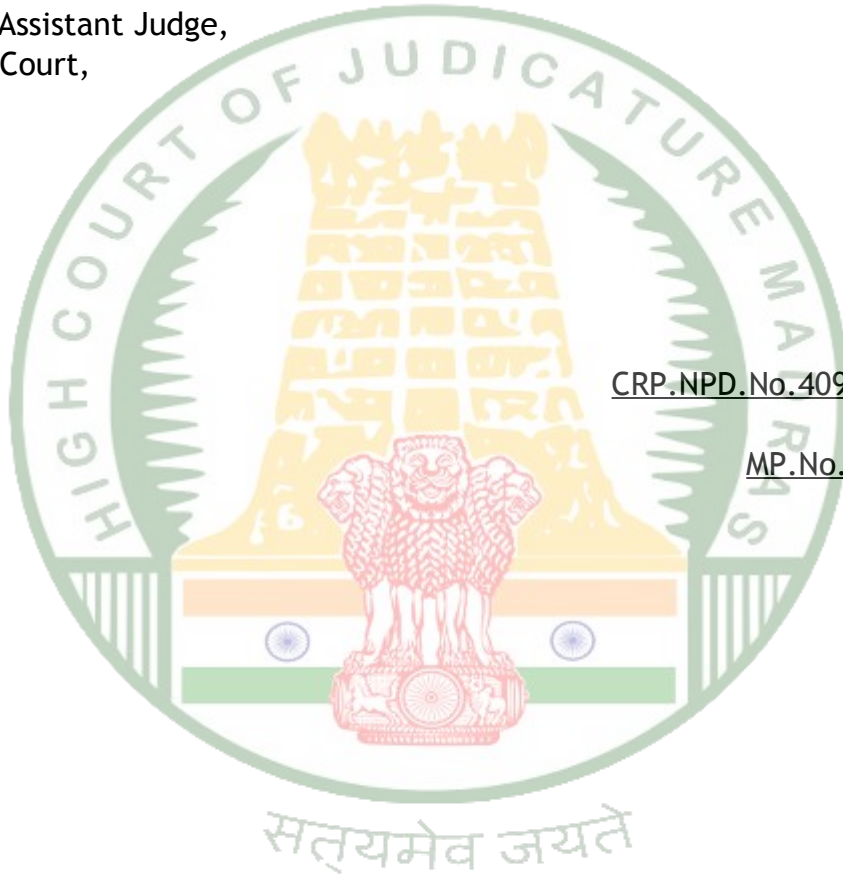
Index : Yes/No

R.HEMALATHA, J.

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To

The XVIII Assistant Judge,
City Civil Court,
Chennai.



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