

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.02.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD)No.2106 of 2013

Senthil Kumar

..

Petitioner

versus

1.Uma

2.Pachaiyammam Durai

3.Selvam

..

Respondents

PRAYER: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, against the order dated 19.02.2013 made in I.A.No.770 of 2011 in O.S.No.347 of 2008 on the file of the learned Principal District Munsif, Thiruvannamalai.

For Petitioner : Mr.G.Rajan

For Respondent No.2 : Mr.S.Radha Gopalan

For Respondent No.3 : M/s.S.Muhunth

for M/s.Sarvabhauman Associates

ORDER

This Civil Revision Petition has been filed as against the dismissal of the application filed to condone the delay of 195 days in filing the petition for restoration of the suit, which has been dismissed for default.

2. The suit has been originally filed by the revision petitioner before the learned Principal District Munsif, Thiruvannamalai, for the relief of partition. The suit was posted for hearing on 10.02.2011, the revision petitioner did not appear for enquiry and therefore, the suit was dismissed for default. According to the plaintiff, he is in possession of the suit property and he has also filed an amendment petition, which was also dismissed by the trial Court. Thereafter, the petitioner has filed an application to condone the delay of 195 days on the ground that he was suffering from jaundice and therefore, he could not be able to make his appearance before the trial Court. Taking note of the fact that, in earlier occasion the suit was dismissed for default and again it restored and it is the second time, the petitioner has filed this application to restore the suit.

3. Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondents 2 and 3.

4. The learned counsel appearing for the respondents 2 and 3 submitted that the conduct of the revision petitioner makes it clear that, he is in the habit of filing petition to restore the suit and only in order to drag on

the proceedings, he has filed this application. The trial Court found that there is no sufficient cause to condone the delay and thereby, dismissed the application filed by the revision petitioner.

5. I have perused the order of the trial Court and the materials available on record.

6. 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. To exercise such liberal approach, there must be a reasonable and sufficient cause ought to have been shown by the party who approach the Court to condone the delay. On perusal of the evidence and materials on the side of the petitioner makes it clear that he was suffered from jaundice. 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 will be given to the revision petitioner to agitate his rights on merits.

7. In the result, this Civil Revision Petition is allowed and the order of the trial Court passed in I.A.No.770 of 2011 in O.S.No.347 of 2008 dated 19.02.2013 is hereby set aside, the delay of 195 days is condoned and the suit is restored. The trial Court is directed to dispose of the suit, within a period of three months, from the date of receipt of a copy of this order. No costs.

25.02.2019

Speaking Order/Non Speaking Order

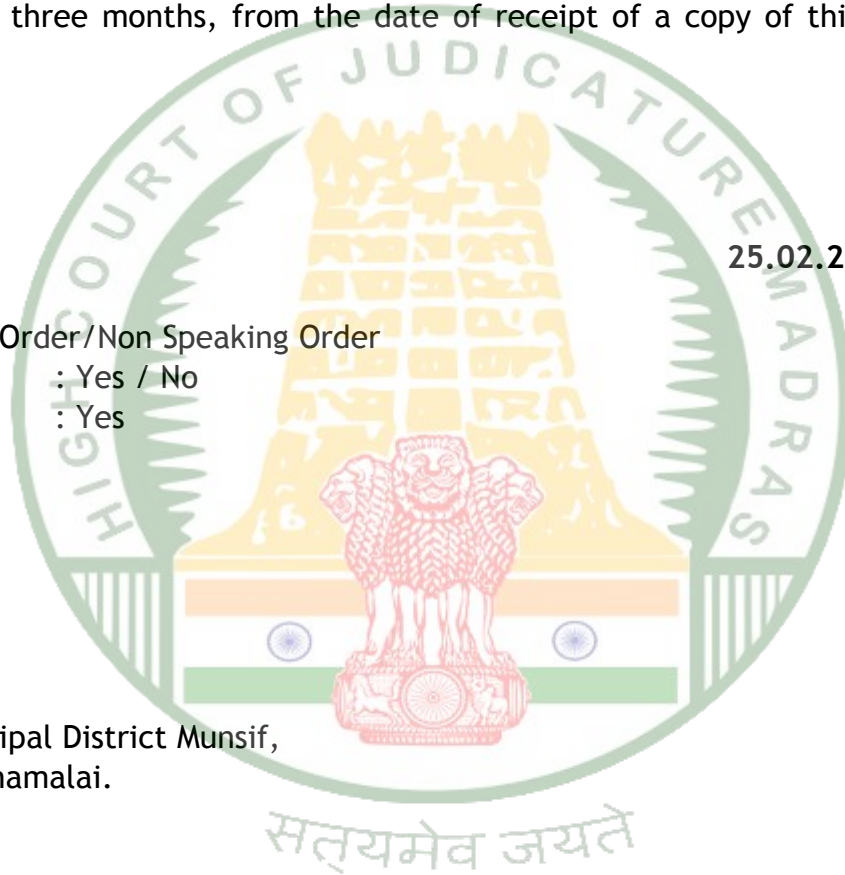
Index : Yes / No

Internet : Yes

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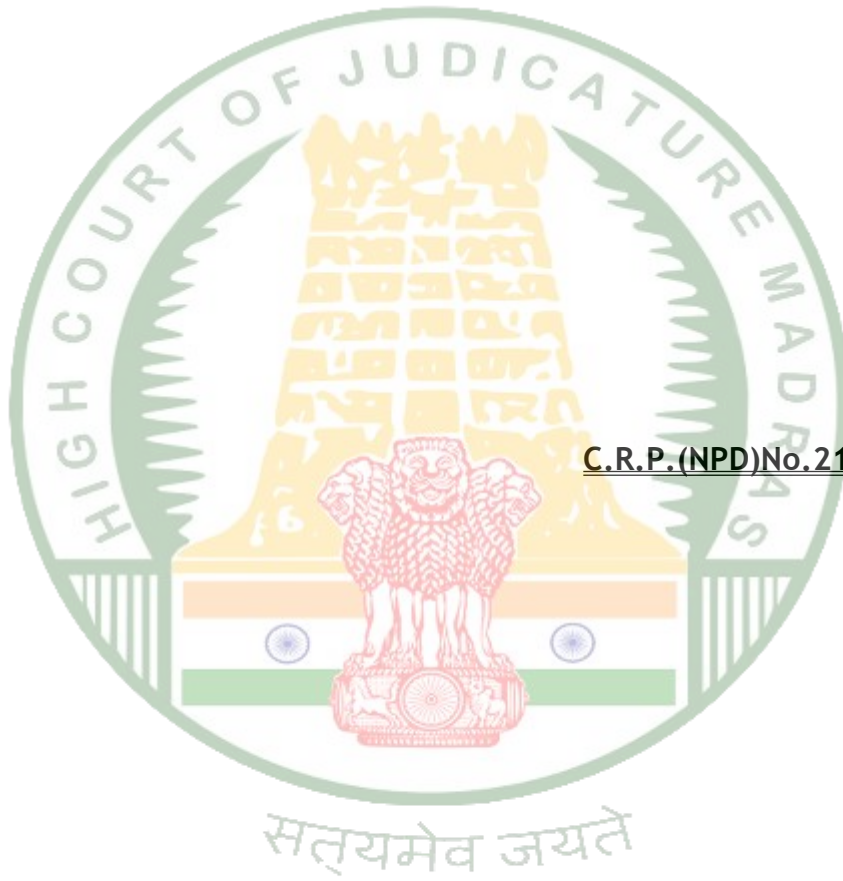
To

The Principal District Munsif,
Thiruvannamalai.



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N.SATHISH KUMAR, J.,
sri



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