

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(NPD).No.4647 of 2015

1.T.Srinivasan

2.T.Pandian

... Petitioners

Vs.

1.T.Rangappan

2.The Indian Oil Corporation Ltd,
(Government of India Undertaking),
Indian Oil Bhavan, Ga.Aliyavar Jung Marg.,
Bandra East, Mumbai-400 051.

... Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the orders of the learned Principal District Judge of Krishnagiri, dated 01.12.2014 in I.A.No.36 of 2013 in Un-Numbered Appeal Suit of 2012.

For Petitioners : Mr.J.Harikaran for
Mr.V.Nicholas & Mr.N.E.A.Dinesh

For Respondents : Mr.R.Esakki Raja for
Mr.Mohammed Fayaz Ali for R2

R1-No Appearance

ORDER

The present Civil Revision Petition has been filed against the fair and decretal order dated 01.12.2014, dismissing the prayer in I.A.No.36 of 2013 in un-numbered Appeal Suit.

2.The said I.A. was filed to condone the delay of 467 days in filing the appeal against the judgment and decree of the Principal Subordinate Judge, Krishnagiri in O.S.No.186 of 2008.

3.The said suit was filed by the petitioner's father to evict the respondents herein, who are tenants in the said property, belonging to the petitioners' father B.M.Thimmarayan. The said suit was dismissed and a judgment and decree dated 03.03.2011 was passed by the Subordinate Judge, Krishnagiri.

4.However, after the suit was dismissed, the petitioners' father passed away and therefore the petitioners filed the appeal with an application to condone the delay in filing the appeal vide I.A.No.36 of 2013 in the un-numbered Appeal Suit.

5. During the pendency of the aforesaid proceedings the petitioners had also filed I.A.No.248 of 2013 under Rules of 163 to 166 of C.R.P., to issue a cheque for a sum of Rs.2,72,902/- in favour of petitioners counsel in the said I.A. The lower Court also dismissed the said I.A. citing the same reason.

6. The learned counsel for the petitioners state that the petitioners were unaware of dismissal of O.S.No.186 of 2008 vide judgment and decree dated 03.03.2011.

7. The father of the petitioners died on 26.04.2011 within 56 days of the dismissal of the suit. The attempt to set aside the judgment and decree passed by the learned Principle District Judge of Krishnagiri in O.S.No.186 of 2008 has been thwarted on the ground of lack of sufficient grounds to condone the delay of 467 days in filing the application.

8. The reasoning of the Principal District Judge, Krishnagiri while dismissing the petition to condone the delay in filing application to set aside decreeing dismissing the suit cannot be sustained. Impugned order is liable to be set aside as the suit was

for evicting the respondents/ defendants from the suit premises which was leased for a period of 20 years.

9. In the suit it was alleged that the respondents were irregular in remitting the rents from 2007. In stead of filing the petition to deposit the rent respondents waited fro the petitioner's father to filed the above suit. However, the suit was dismissed on 3rd March 2011 without impleading the petitioners as legal heirs after the petitioners' father died on 26.04.2011.

10. Though a copy of Judgment of the Court has not been filed it is evident that the case was disposed on merits in 2011 with getting the petitioners impleaded as Legal representatives of the original Plaintiff.

11. Thus palpable injustice has been caused in refusing to condone the delay without impleading them. In any event, the period of lease would have expired pending this Civil Revision Petition. Therefore to drive the petitioners to file another eviction proceeding is nothing but to give scope for another protracted Litigation. Therefore, in the ends of Justice the delay is condoned subject to payment of cost of Rs.5,000/- to the respondents.

12. Consequently, the present Civil Revision Petition is allowed. The Principal District Court, Krishnagiri is directed to number the appeal and to take up the appeal and dispose the same within a period of six months from the date of receipt of copy of this order.

13. The Civil Revision Petition stand allowed with above observations. No costs.

18.02.2019

Index : Yes/No
Internet : Yes/No

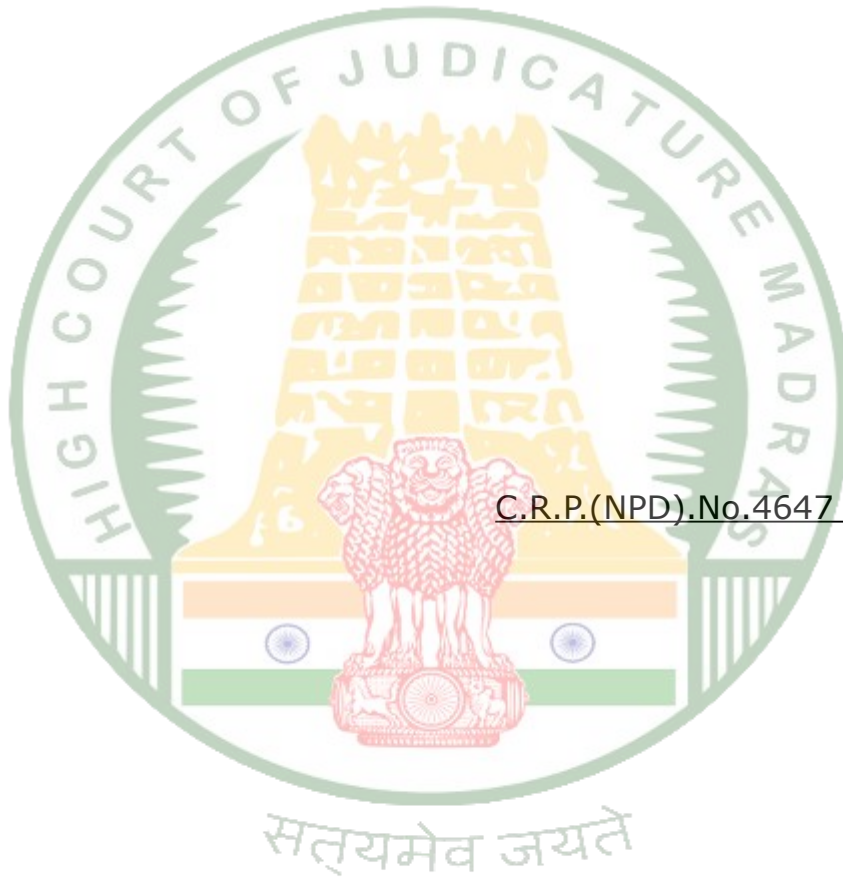
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To
The Principal District Court,
Krishnagiri.

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C.SARAVANAN, J.

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