

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.2942 of 2013
and
M.P.No.1 of 2013

Palanisamy

Petitioner

Vs

Kamala

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dated 10.04.2013 made in I.A.No.135 of 2002 in unnumbered A.S.of 2011 on the file of Principal District Judge, Puducherry.

For Petitioner : Mr.R.S.Vaithianathan

For Respondent : No appearance

ORDER

This Civil Revision Petition has been directed as against the order passed in IA No.135 of 2012 in unnumbered AS of 2011 on the file

of Principal District Judge, Puducherry.

2. Before the trial Court, the respondent Kamala herein as a plaintiff filed a suit in OS.No.364 of 2001, for foreclosure of the mortgage deed executed by the petitioner/defendant. The Suit was decreed as an exparte on 03.08.2004. In order to set aside the exparte decree, the petitioner filed an application under Order 9 Rule 13 of Civil Procedure Code in IA No.1295 of 2006 and the same was allowed on 22.02.2007, with a condition to pay a cost of Rs.200/-. Thereafter, on the point of jurisdiction, the case was transferred to I Additional District Munsif, Puducherry from the Court of Subordinate Judge, Puducherry. After transfer of the case, the petitioner herein has filed an application for payment of cost along with the petition to condone the delay. The said application filed by the petitioner in IA No.4422 of 2007 was rejected by the I Additional District Munsif, Puducherry on 30.01.2008. Against the said rejection order, the petitioner has preferred CRP No. 1985 of 2008, before this Court and the same has also been dismissed on merits on 17.09.2009. After knowing the order of dismissal, only on 28.07.2011, the petitioner has filed an appeal under Order 43 rule 1 of Civil Procedure code, with an application to condone the delay of 2536 days.

3. The learned Principal District Judge after affording an opportunity to the respondent / defendant had dismissed the application filed by the petitioner/plaintiff.

4. Against the said dismissal order, the petitioner has approached this Court with this present Civil Revision petition.

5. Today, when the Civil Revision Petition is came up for hearing, the learned counsel for the petitioner alone present. Despite of several adjournments, after entering into the appearance, the respondent has not turned up to proceed with the Civil Revision Petition. Further, it is pertinent to note that the Civil Revision Petition is pending from the year of 2013. Hence, I am of the opinion that the presence of the respondent is not at all essential for disposing this Civil Revision Petition and accordingly the same is taken up for disposal on merits.

6. The learned counsel appearing for the petitioner would contend that only because of the reason that the petitioner is age old person and also for the reason that he has received the case records from his earlier counsel only on 28.07.2011, he did not file an appeal within the stipulated period. He has further submitted that immediately on receipt of case records from his earlier counsel, he has preferred an appeal before the first Appellate Court. It is further added on the side of the petitioner that the learned Principal District Judge, Puducherry without considering those aspects had dismissed the application filed by the petitioner.

7. Upon considering the arguments advanced by the learned counsel appearing for the petitioner and on a careful perusal of the order passed by the Principal District Judge, Puducherry would go to show that the sole reason assigned by the petitioner for such a long delay of 2536 days in filing the application is that the petitioner's counsel at Madras had not returned the entire case records immediately after the disposal of Civil Revision Petition. He has returned the case records only on 28.07.2011.

8. Even though the above mentioned reasons are the case of the petitioner, the same has not been substantiated with the relevant documents and the evidence. In fact, the delay requires to be condoned is not an ordinary one. After dismissal of Civil Revision Petition on 28.07.2011, nothing prevented the petitioner to file an appeal immediately after the disposal of said Civil Revision Petition. It is unbelievable that the case records are retained by his earlier counsel for a period of six years. In fact, the records pertains to Civil Revision Petition is not necessary for filing an appeal. If really the petitioner interested in filing the appeal, it is not difficult for the petitioner to obtain the copy of the judgment rendered by the trial Court in time and file an appeal immediately. Without adopting those modes, the petitioner has merely filed an application to condone the delay of 2536 days in filing the appeal cannot be accepted.

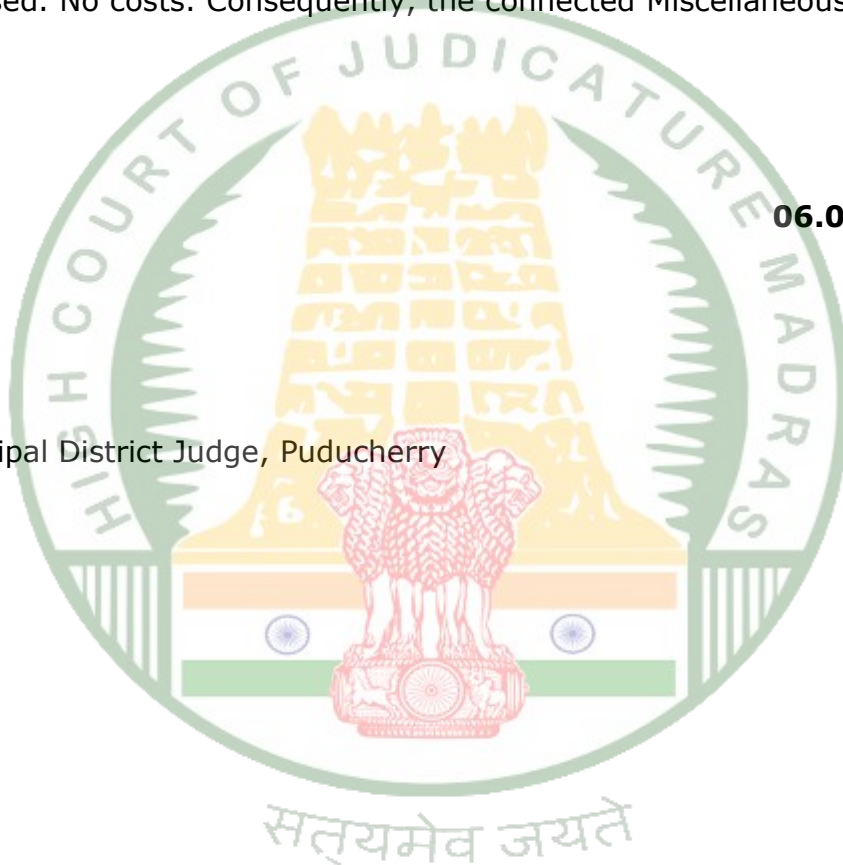
9. The first Appellate Court has also come to the same conclusion and dismissed the application filed by the petitioner. Therefore, I am of the opinion that there is no need to interfere with the order passed by the first Appellate Court. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

vrn

To

The Principal District Judge, Puducherry

06.09.2019



WEB COPY

R.PONGIAPPAN, J.,

vrn



Civil Revision Petition (NPD) No.2942 of 2013
and
M.P.No.1 of 2013

WEB COPY

06.09.2019