

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM :

The HON'BLE MR.JUSTICE M.DURAISWAMY

C.R.P.No.4564 of 2013

M.George

...Petitioner/Appellant

Vs.

1.Rajasekaran @ Thodda Rama
2.S.Madevayya
3.Chikkanna

4.The District Collector,
Erode District, Erode.

5.The Tashildar,
Taluk Office,
Sathyamangalam - 638 402,
Erode District.

...Respondents/Respondents

Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 27.08.2013 made in I.A.No.63 of 2013 in A.S.No.5 of 2005 on the file of the III Additional District and Sessions Court, Erode at Gobichettipalayam.

For Petitioner : Mr.K.Sathyaraj

For Respondents : Mr.R.T.Doraisamy (R1 & R2)

Mr.S.Jaganathan,
Government Advocate (CS) - R4 & R5

R3 - not ready in notice

O R D E R

Challenging the fair and final order passed in I.A.No.63 of 2013 in A.S.No.5 of 2005 on the file of the III Additional District and Sessions Court, Erode at Gobichettipalayam, the plaintiff in O.S.No.55 of 1999 on the file of the District

Munsif Court, Sathyamangalam has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.55 of 1999 for declaration, recovery of possession and for permanent injunction. After contest, the trial Court, by its judgment and decree dated 06.08.2001, dismissed the suit. As against the same, the plaintiff preferred an appeal in A.S.No.5 of 2005 on the file of the III Additional District and Sessions Court, Erode at Gobichettipalayam. Thereafter, the appeal was dismissed for non-prosecution on 12.11.2008. Subsequently, the petitioner/plaintiff filed an application in I.A.No.63 of 2013 to condone the delay of 1481 days in filing the petition to restore the appeal which was dismissed for default on 12.11.2008. The said application was filed on 02.01.2013. In the affidavit filed in support of the petition, the petitioner has stated that he was suffering from Paralysis on 10.03.2007 and he was taking treatment and his son took him to Bangalore for giving Ayurveda treatment. Further, the petitioner has stated that he got well to some extent on 30.12.2012 and met his counsel who informed that on 16.03.2007 itself, he had reported no instructions and therefore, the Lower Appellate Court issued notice to the petitioner and after several adjournments, the appeal was dismissed for default on 12.11.2008. The application filed by the petitioner was opposed by the defendants. In the counter filed by the 2nd respondent, he has stated that the petitioner has not stated where the petitioner took treatment and also failed to give the details of the treatment given to him. Before the Lower Appellate Court, he was examined as P.W.1 and his friend was examined as P.W.2. It is pertinent to note that the Doctor who gave treatment to the petitioner was not examined as a witness.

3.When the delay is inordinate, the petitioner should have examined the Doctor to establish that he took treatment under the said Doctor. In the absence of sufficient cause shown by the petitioner, the delay cannot be condoned. The Lower Appellate Court, considering all these aspects, disbelieved the case of the petitioner and dismissed the petition.

4.In the judgment reported in (2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another] the Hon'ble Supreme Court held that in the absence of sufficient cause shown by the petitioner, the delay should not be condoned.

5.The ratio laid down by the Hon'ble Supreme Court in the above referred judgment squarely applies to the facts and circumstances of the present case.

6.Since the petitioner has not given any details with regard to the alleged treatment taken by him, the delay cannot be condoned. I do not find any error or irregularity in the order passed by the Lower Appellate Court. The Civil Revision Petition is devoid of merits and the same is dismissed. No costs.

va

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

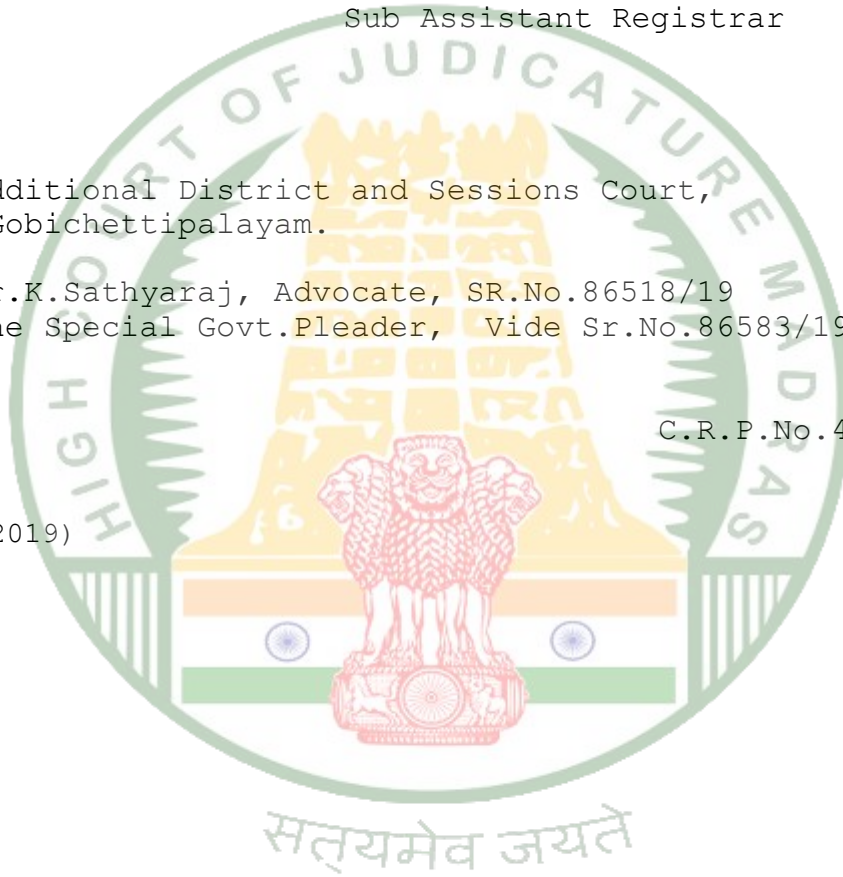
To

The III Additional District and Sessions Court,
Erode at Gobichettipalayam.

+1cc to Mr.K.Sathyaraj, Advocate, SR.No.86518/19
+1cc to the Special Govt.Pleader, Vide Sr.No.86583/19

C.R.P.No.4564 of 2013

Kak(18/11/2019)



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