

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 29.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

C.R.P.(NPD).No.1685 of 2018

and

C.M.P.No.9278 of 2018

Raju Pillai

...Petitioner

Vs

Palanisamy

...Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the fair and decretal order dated 22.01.2018 passed by the learned Principal District Munsif, Cuddalore in I.A.No.418 of 2017 in O.S.No.277 of 2014.

For Petitioner : Mrs.Hema Sampath, SC
for Mrs.R.Meenal

For Respondent : Mr.D.Ravichander

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ORDER

The challenge in the present revision is rejection of the petitioner's application seeking to condone the delay of 76 days in filing the application to restore the suit.

2. The reason assigned by the petitioner in his application before the trial Court is that the petitioner was in London undergoing treatment and on 25.10.2016, he could not be present before the Court. In view of his non-availability, the trial Court had rejected the application, on the ground that the petitioner herein had not proved his alleged illness and on the ground that since the application has been made by a relative of the plaintiff, the same is not maintainable.

3. The learned Senior Counsel for the petitioner would submit that the suit is for declaration of title and recovery of possession and that they have a valid and arguable case before the trial Court. In view of the bonafide reasons that he was unavailable when the suit was posted for hearing on 25.10.2016, since he was taking treatment in London, the trial Court ought to have considered the same leniently.

4. The learned counsel for the respondent on the other hand, submitted that in view of Order 3 Rules 1 and 2 of Civil Procedure Code read with Rules 16 and 17 of the Civil Rules of Practice, the application filed by the relative of the plaintiff, is not maintainable. The learned counsel also submitted that if at all, such an application is made by a person other than the plaintiff, the leave of the Court ought to have been obtained. Even

petitioner was not available in the Country, was not supported by any documents. As such, he sought for rejection of the Civil Revision Petition.

5. I have given careful consideration to the submissions made by the respective counsels.

6. Insofar as the reason assigned by the petitioner before the trial Court is concerned, the learned Senior Counsel for the petitioner had produced a copy of the passport and visa before this Court, which evidences that the petitioner was in London. Since such a document was not produced before the trial Court, it cannot be strictly said that they had established their non-availability in the Country before the trial Court. Nevertheless, when such a document is produced before this Court, the same cannot be ignored. Since the passport and visa establishes the aspect that the petitioner was not available in the Country, the reason stated by the petitioner to condone the delay, can be deemed to be a sufficient cause. Likewise, the objection raised by the petitioner that the relative of the plaintiff alone had filed in this Court, is not maintainable in view of Order 3 Rule 1 CPC and Rules 16 and 17 of Civil Rules of Practice is concerned, it is no doubt true that when an application is being filed by a person other than the plaintiff, Rule 16 of the Civil Rules of Practice envisages that the leave of the Court should be obtained.

7. The learned counsel for the petitioner would submit that since it took some time for the petitioner to come to the Country and in order to avoid the delay, such an application was filed by the relative of the plaintiff. Nevertheless, the petitioner himself has now filed an affidavit before this Court in which he had reiterated the same reason in his application before the trial Court seeking to condone the delay. When such an application is filed before this Court, I am of the view that the same could be considered as a compliance of Order 3 Rule 11 CPC read with Rules 16 and 17 of Civil Rules of Practice. Though it cannot be strictly held that the trial Court has erred in passing the order under challenge, in view of the aforesaid findings, the delay in filing the application to restore the suit cannot be considered.

8. However, this Court has also taken into consideration the prejudice caused to the respondent herein in defending the present Civil Revision Petition before this Court and the same could be set right, if the petitioner herein is put on terms.

9. For all the foregoing reasons, the order dated 22.01.2018 passed in I.A.No.418 of 2017 in O.S.No.277 of 2014 is set aside. Consequently, the delay of 76 days in filing the application to restore the suit in O.S.No.277 of

10. The petitioner shall also pay a sum of Rs.10,000/- to the respondent and produce the receipt of such payment before the trial Court, within 30 days from the date of receipt of copy of this order.

11. Accordingly, the present Civil Revision Petition stands ordered. Consequently, connected Miscellaneous Petition is closed.

29.01.2019

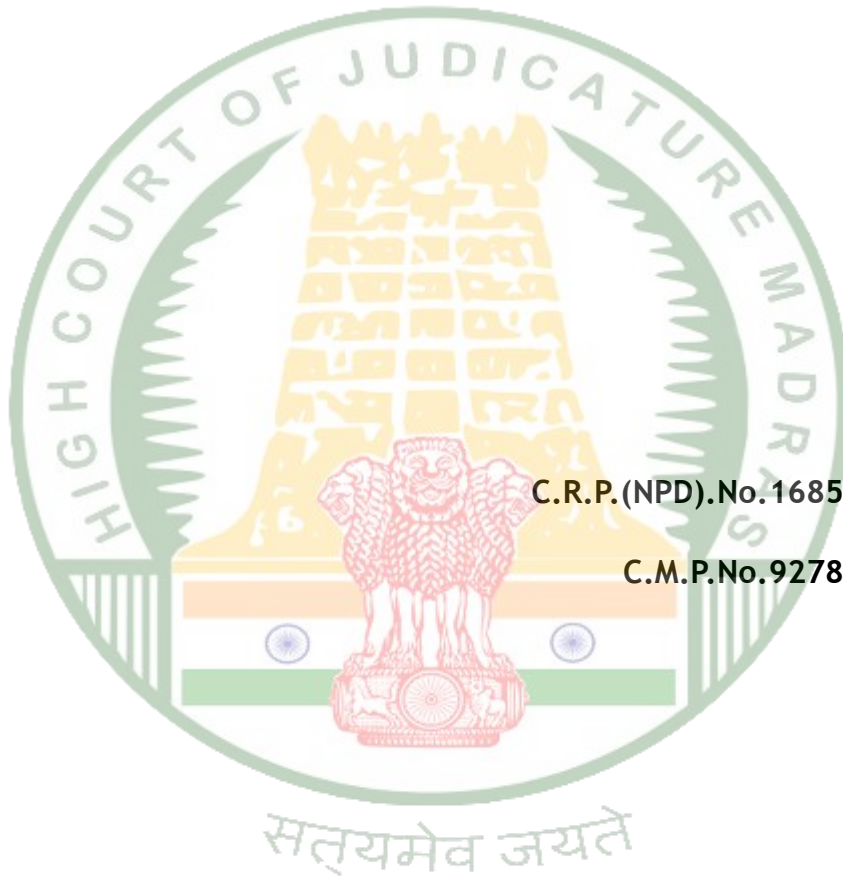
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M.S.RAMESH.,J

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