

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2019

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P.No.339 of 2016

and

C.M.P.No.1783 of 2016

1.Muthusamy

2.Lakshmi Ammal

3.Arumugam Pillai

..... Petitioners

Vs

Seran

..... Respondent

PRAYER: This Civil Revision Petition has been filed praying to set aside the Fair and Decreetal Orders dated 01.09.2015 and made in I.A.No.48 of 2014 in an Unnumbered Appeal suit on the file of Subordinate Court, Kallakurichi and allow this Revision Petition.

For Petitioners: Ms.A.Bharathi

For Respondent : Mr.N.Ramesh for sole respondent.

O R D E R

The above Civil Revision Petition has been filed challenging the order passed by the learned Subordinate Judge, Kallakurichi in I.A.No.48 of 2014 in an unnumbered appeal suit in and by which the learned Subordinate Judge has condoned the delay of 1329 days in filing the appeal.

2.The matter had come up on two earlier occasions before this Court and there was no representation for the respondent and on both days, this matter was posted under the caption "For Orders". Today, when the matter was called, it is unfortunate that the learned Counsel for the respondent after filing vakalat represents that the client has not contacted them and therefore, they are not in a position to argue the matter. Once a client has entrusted vakalat to a Counsel, it is the duty of the Counsel to represent and argue the case. Hence, this Court is proceeding to hear the petitioners and pass orders.

3.The brief facts which are essential for the disposal of this revision petition are as follows:

The defendants in the suit are the revision petitioners before this Court. The respondent has filed a suit in O.S.No.1252 of 2004 on the file of the III Additional District Munsif Court for declaration and permanent injunction. By a Judgment and decree dated 02.06.2010, the said suit was dismissed. Thereafter, the respondent has filed a first appeal before the Subordinate Court challenging the Judgment and decree and since there was a delay of 1329 days in filing the appeal, the respondent has taken out an application to condone the delay of 1329 days in I.A.No.48 of 2014. The reason that has been adduced to condone the delay is that the respondent has been suffering from jaundice and sugar complaint and in order to take treatment, they have gone to Kerala and his wife has also followed him to take care of him and thereafter, when he returned to his native village, he came to know about the dismissal of the suit and hence, the delay has occasioned.

4.The revision petitioners herein had filed a counter in which they have categorically stated that the averments made in the affidavit filed in support of the petition is absolutely false and throughout 1329 days, the plaintiff was very much available in the town and was running a cycle shop.

5.However, the learned Subordinate Judge has proceeded to allow the said application by simply holding that reasons have been given in the affidavit filed in support of the petition to condone the delay of 1329 days in filing the appeal. Challenging the said order, the defendants are before this Court.

6.Heard the learned Counsel for the petitioners.

7.The only reason that has been given by the plaintiff is that he was suffering from jaundice as well as sugar complaint and so there was a delay for a period of 1329 days as he was taking treatment at Kerala. There is not a single shred of evidence to prove:

- a) that he was suffering from Jaundice and sugar complaint.
- b) that he went to kerala for taking treatment.

Despite, there being no evidence to show sufficient cause, the learned Subordinate Judge has proceeded to allow the petition only on the ground that reasons have been given in the affidavit

filed in support of the petition without considering whether reasons are sufficient or not.

8.Hence, the order of the trial Court is perverse and the same is set aside. In the result, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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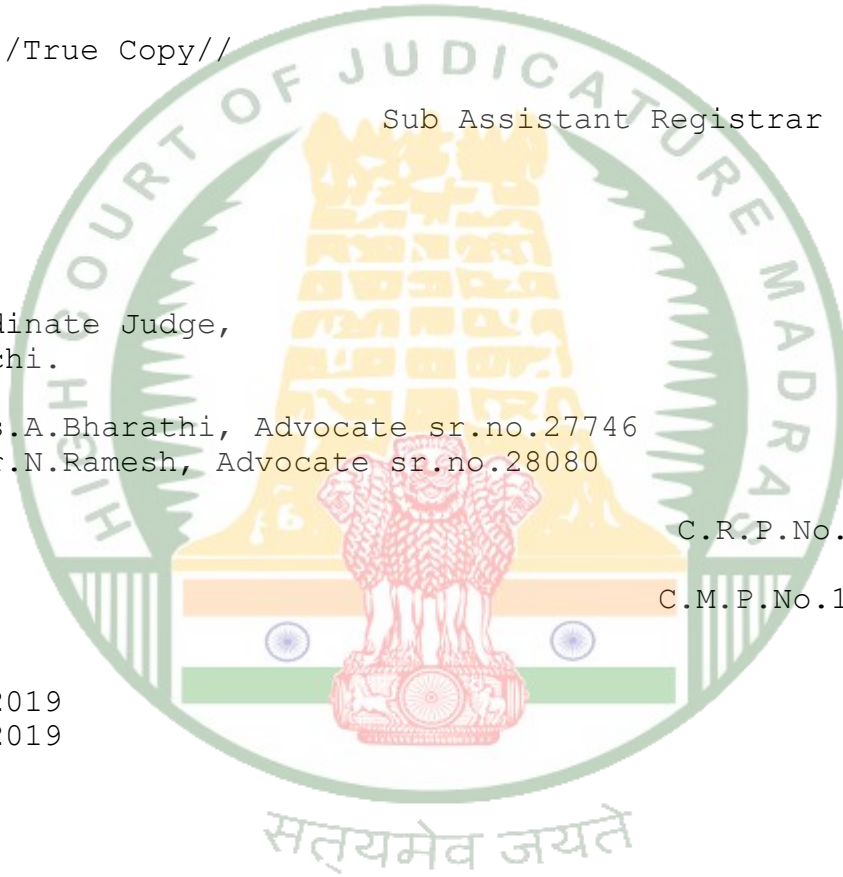
The Subordinate Judge,
Kallakurichi.

+1cc to Ms.A.Bharathi, Advocate sr.no.27746

+1cc to Mr.N.Ramesh, Advocate sr.no.28080

C.R.P.No.339 of 2016
and
C.M.P.No.1783 of 2016

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