

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.04.2019

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THE HONOURABLE MR.JUSTICE C. SARAVANAN

C.R.P.(NPD).No.2039 of 2014

G.Rajendiran

... Petitioner

-vs-

N.Harikrishna Raju @ N.H.K.Raju, deceased  
represented by his legal heir & widow  
Mrs. Geetha.

... Respondent

**PRAYER:** Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the judgment and the order dated 05.11.2013 passed in I.A.No.541/2012 in O.S.No.39/2009 on the file of the Sub-ordinate Court at Ponneri, Tiruvallur District.

For Petitioner : Mr.V.Rajendran

For Respondent : No Appearance

सत्यमेव जयते

**ORDER**

The above Civil Revision Petition is filed challenging the order passed by the learned Sub-ordinate Court, Ponneri, in I.A.No. 541/2012 in O.S.No.39/2009, dated 05.11.2013.

2. The said application was filed under section 5 of limitation Act to condone delay of 311 days in filing petition to restore the suit to the file. The suit was dismissed on 16.09.2011 for non prosecution and for non appearance of P.W.1.

3. According to the petitioner, the first defendant died on 28.04.2011. The second respondent filed a memo on 16.08.2011. The said memo was not transmitted to the suit bundle and therefore, the case was called on 16.09.2011 and dismissed for non prosecution.

4. It is stated that the first defendant died on 28.4.2011 and the intimation by way of memo was also filed by the respondent's counsel on 16.8.2011. However, the case being in the list for trial and since both the petitioner and the counsel were not present, the petitioner was called absent and the suit was dismissed for non prosecution.

5. The court has rejected the reasoning given by the petitioner for condoning the delay on the ground that it was incumbent on the part of the petitioner to be present when the case was in the list and merely because the counsel was out of station in connection with some

other case was not sufficient. The court has also found fault on the part of the petitioner for checking the A diary only on 13.8.2012.

6.This Court below has relied upon the decision of this Court reported in **A.Seyed Hakim and Others vs K.S.Maideen and another** 2012(1) CTC 801, wherein it was held as follows:-

*" Limitation Act, 1963 (36 of 1963), Section 5 - "Sufficient cause" - Discretion deliberately conferred on Court - Judicial power and discretion to be exercised to advance substantial justice - "Sufficient cause" to be applied in reasonable, pragmatic practical and liberal manner if delay is not on account of dilatory tactics, want of bona fides, deliberate inaction or negligence."*

7.There is no representation on behalf of the respondent despite notice and their name being printed in the cause list today.

8.I have gone through the records and considered the arguments advanced by the learned counsel for the petitioner. No doubt there is a delay in filing application to set aside the order dismissing the suit for non prosecution. However, the reasoning for condoning the delay appears to be harsh inasmuch as the counsel for the petitioner was out of station on 16.08.2011.

9.The case would have adjourned the case had the memo filed by the respondent's counsel was brought to its notice. Though the petitioner has been negligent in not following with his counsel regarding the case especially when the case was in the list for trial nevertheless in this case the delay ought to have been condoned. Dismissal of the suit on technical ground results in miscarriage of justice. The court could have condoned the delay on cost. It is not the length of the delay but the reason for the delay which would guide the court for condoning the delay. I am of the view that the delay ought to has been condoned on cost.

10.Consequently, the present Civil Revision Petition stands allowed subject to payment of cost of Rs.10,000/- to the respondent. This amount shall be deposited to the credit of the above suit before Sub Court, Ponneri within a period of four weeks of date of receipt of this order. On such deposit the application filed in I.A.No 541 Of 2012 in O.S.No. 39 of 2009 shall stand allowed. Petitioner shall take steps to bring on record the other legal representatives of 1<sup>st</sup> defendant within such time. On such deposit, respondent shall be entitled for payment out. It shall be the duty of the petitioner to serve notice on the respondent to intimate the order passed in this Civil Revision Petition.

11. Since the suit is of the year 2009. The Sub Court, Ponneri shall endeavour to complete the trial and pass a judgment and decree within a period of nine months from date of receipt of a copy of this order.

12. The Civil Revision Petition stands allowed with above directions..

**01.04.2019**

Index : No  
Internet : Yes  
Speaking order/Non Speaking order

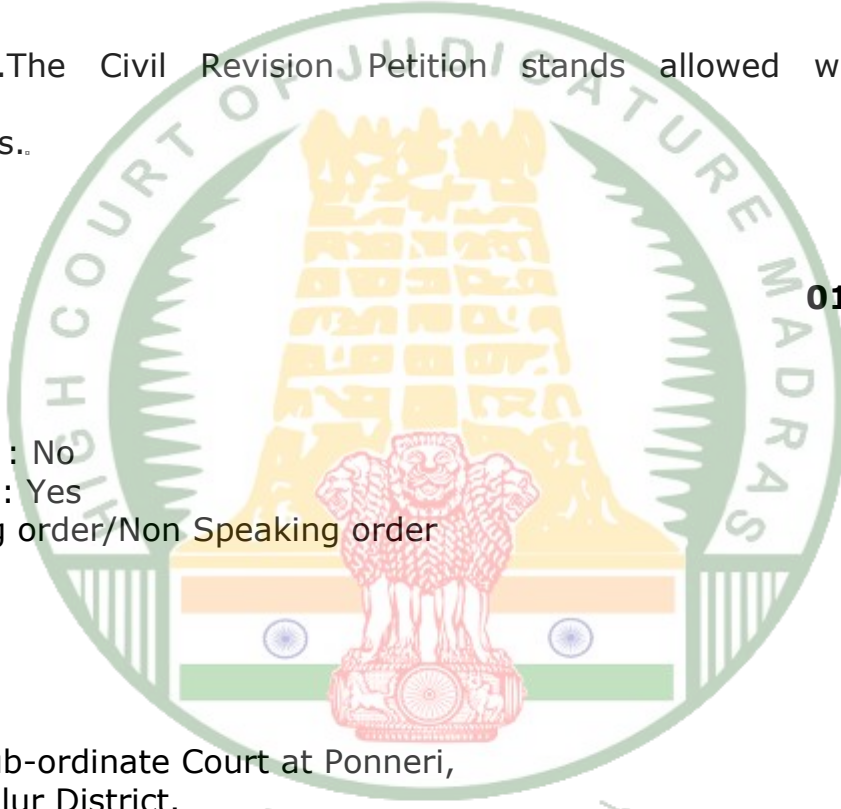
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To

1. The Sub-ordinate Court at Ponneri,  
Tiruvallur District.

2. G. Rajendiran,  
Perumal Koil Street,  
Kiruthalapuram Village,  
Orakkadu Post,  
Tiruvallur District.

3. The Section Officer,  
V.R. Section. High Court, Madras.



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**C. SARAVANAN,J.**

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