

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.2492 of 2014

1. S.K. Ramalingam
2. K. Soundarrajan
3. K.Kaladevi
4. Umamahewari

... Petitioners

v.

1. K. Murugan
2. S.K. Shanthakumar
3. K.Swaminathan

... Respondents

सत्यमेव जयते

Civil Revision Petition filed under section 115 of the Civil Procedure Code against the order dated 20.12.2013 made in I.A.No.197 of 2013 in unnumbered appeal, passed by the Principal District Judge, Erode.

For Petitioners : Mr. M. Kempraj

For Respondents : Mr. M. Roshan Atiq – for R1 & R2
No Appearance – for R3

ORDER

Challenging the fair and final order passed in I.A.No.197 of 2013 in unnumbered appeal .../2013, on the file of the Principal District Court, Erode, the plaintiffs in O.S. No.40 of 2009, on the file of the Subordinate Court, Gobichettipalayam, have filed the above Civil Revision Petition.

2. The plaintiffs filed the suit in O.S. No.40 of 2009 for declaration, partition and for permanent injunction. After contest, the suit was dismissed by the Trial Court.

3. Aggrieved over the same, the plaintiffs filed the unnumbered appeal before the Principal District Court, Erode along with an application in I.A.No.197 of 2013 to condone the delay of 525 days in filing the appeal.

4. In the affidavit filed in support of the application, the plaintiffs have stated that the 1st plaintiff was taking care of the case and

he was also examined as P.W.1 in the suit and that he was contacting their counsel regularly and also stated that he knows the case very well than the other plaintiffs. The 1st plaintiff has stated that in the last week of November 2011, he was suffering from severe jaundice and was bed-ridden. Further, the 1st plaintiff has stated that he was taking native treatment and there was nobody to help him to contact his counsel. Therefore, they could not file the appeal as against the judgment and decree passed in O.S.No.40 of 2011 within the time of limitation. Further, the 1st plaintiff has stated that he recovered from the illness only during the month of July 2012 and in the meantime, his brothers, who are the respondents/defendants came to them and represented that they will make a compromise in the matter and requested the plaintiffs not to proceed with the appeal proceedings. Believing their words, the plaintiffs did not file the appeal immediately. Later, the defendants informed that they are not willing for compromise and the plaintiffs can take any proceedings as they like. Thereafter, the plaintiffs filed the appeal with a delay of 525 days.

5. The application filed by the plaintiffs before the Lower Appellate Court was contested by the respondents stating that the

plaintiffs have not given sufficient cause for condoning the delay.

6. The Lower Appellate Court dismissed the application finding that the plaintiffs have not given sufficient cause for the delay.

7. The petitioners have categorically stated the reasons for the delay in filing the appeal. That apart, the 1st petitioner was also examined as P.W.1 before the Lower Appellate Court to speak about the illness suffered by him and also about the compromise mooted out by the respondents after the dismissal of the suit.

8. When the petitioners have given sufficient reasons for condoning the delay of 525 days in filing the appeal, the Lower Appellate Court, should have accepted the same and given an opportunity to the plaintiffs to prosecute the appeal. In the interest of justice, the Lower Appellate Court should have condoned the delay in filing the appeal.

9. In these circumstances, the fair and decreetal order passed in I.A.No.197 of 2013 can be allowed on payment of costs.

10. Accordingly, the fair and decreetal order passed in

I.A.No.197 of 2013 in the unnumbered appeal2013 are set aside and the application in I.A.No.197 of 2013 stands allowed on condition that the petitioners paying a sum of Rs.3,000/- as costs to the respondents 1 and 2, within a period of two weeks, from the date of receipt of a copy of this order. On compliance, the Principal District Court, Erode, shall number the appeal and dispose of the same, on merits and in accordance with law, as expeditiously as possible.

With these observations, the Civil Revision Petition is allowed. Consequently, the connected miscellaneous petition is closed.

01.11.2019

Index : Yes / No

Speaking order / Non Speaking Order

Note : Issue order copy by 04.11.2019

Rj

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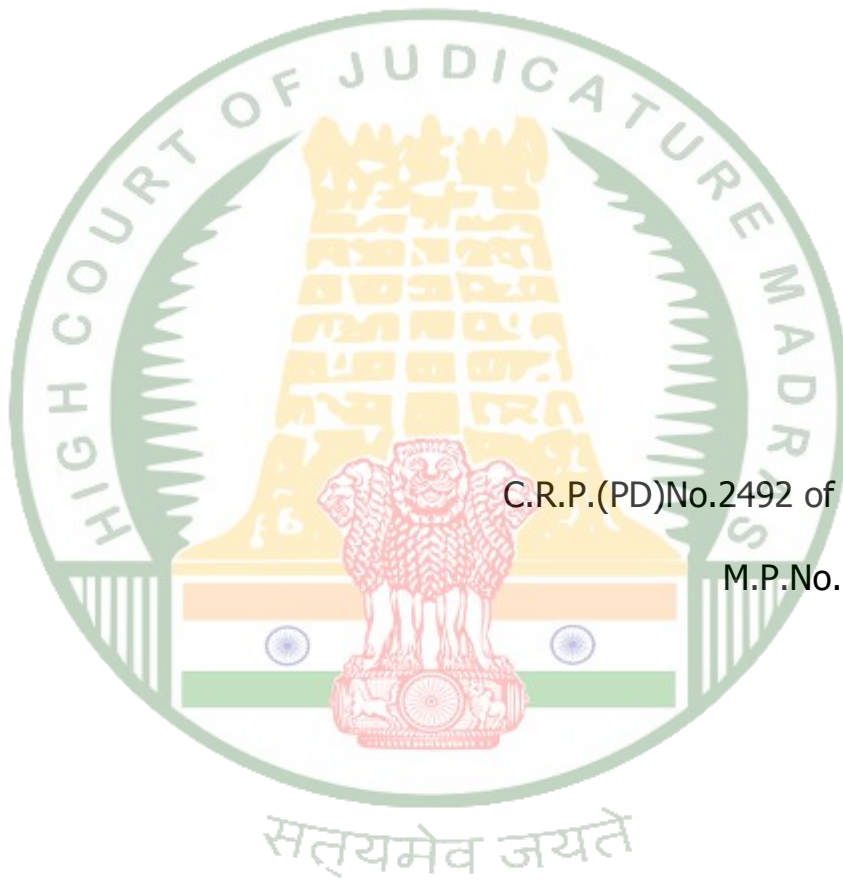
To

The Principal District Court,
Erode,

C.R.P.(NPD).No.2492 of 2014

M.DURAISWAMY, J.

Rj



C.R.P.(PD)No.2492 of 2014 and
M.P.No.1 of 2013

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