

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD)No.2782 of 2014

and

M.P. No.1 of 2014

V. Srinivasan

...

Petitioner

Vs

M.M. Rajavel

...

Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 10.06.2014 made in I.A. No.53 of 2012 in unnumbered A.S. Of 2013 on the file of Principal District Court at Namakkal.

For Petitioner : Mr.S. Sithiraj Anandam

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 10.06.2014 passed by the Principal District Judge, Namakkal in I.A. No.53 of 2012 in unnumbered A.S. of 2013

Brief facts leading to the filing of the instant Civil Revision

Petition are as follows :-

2. The petitioner is the defendant in the suit O.S. No.80 of 2010 filed by the respondent seeking for the relief of specific performance in respect of the sale agreement, dated 06.08.2004 entered into by him with the petitioner. The Trial Court by its judgment and decree, dated 29.11.2011, decreed the said suit O.S. No.80 of 2010 by directing the petitioner to refund the advance amount of Rs.4,50,000/- to the respondent and rejected the relief of specific performance of the agreement, dated 06.08.2004.

3. Aggrieved by the aforesaid judgment and decree, dated 29.11.2001 passed in O.S. 80 of 2010, the petitioner, who is the defendant in the suit preferred an appeal before the Principal District Judge, Namakkal. He filed the application in I.A. No.53 of 2012 in unnumbered A.S. of 2013 on the file of the Principal District Judge, Namakkal to condone the delay of 250 days in filing the appeal. The reason given by the petitioner for the said delay is that he was suffering from Jaundice. A counter affidavit was also filed by the respondent in I.A. No.53 of 2012 stating that no sufficient reasons have been given by the petitioner to condone the inordinate delay and

further no documentary evidence has been produced by him in support of I.A. No.53 of 2012. By order, dated 10.06.2014, the learned Principal District Judge, Namakkal, dismissed I.A. 53 of 2012 in unnumbered A.S. of 2013. Aggrieved by the dismissal of the I.A. No.53 of 2012 in unnumbered A.S. of 2013, the instant Civil Revision petition has been filed under Section 115 of the Civil Procedure Code.

4. Heard Mr.S.Sithirai Anandam, learned counsel for the petitioner. Despite service of notice on the respondent, and his name having been printed in the cause list today, there is no appearance on the side of the respondent.

5. This Court has perused the impugned order. The learned Principal District Judge, Namakkal has dismissed I.A No.53 of 2012 in unnumbered A.S. of 2013 filed by the petitioner to condone the delay of 250 days in filing the appeal on the ground that no documentary evidence has been produced by the petitioner in support of his contention that he was suffering from Jaundice, which resulted in the delay in filing the appeal.

6. The learned Principal District Judge, Namakkal has also relied

upon the judgment of this Court reported in **(2009) 5 MLJ 276** in the case of **State Bank of Mysore, Chennai Main Branch, Chennai versus Syarikat Pengerak Penang, a registered partnership Firm by their power of Attorney Agent K.T.M. Mohamed Basheet, Chennai and others**, wherein, this Court has observed that when there is absolutely no sufficient cause or reasoning has been given in the affidavit filed under Section 5 of the Limitation Act to condone the delay of 1240 days in preferring a petition under Order 9 Rule 13 CPC, the delay cannot be condoned. Further in the instant case, even though the respondent had sought for a specific performance decree, the Trial Court rejected the same and instead granted the relief of refund of advance only to the respondent.

7. Considering the above fact also and considering the fact that no documentary evidence has been produced by the petitioner before the learned Principal District Judge, Namakkal, in the impugned proceedings viz. I.A. No.53 of 2012 in support of his contention that he was suffering from Jaundice and was taking country treatment, which resulted in a delay of 250 days, this Court is of the considered view

that the Trial Court has rightly rejected the application filed by the

petitioner.

8. For the aforesaid reasons, this Court does not find any infirmity in the impugned order passed by the Trial Court. Accordingly, there is no merit in this Civil Revision Petition and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

26.06.2019

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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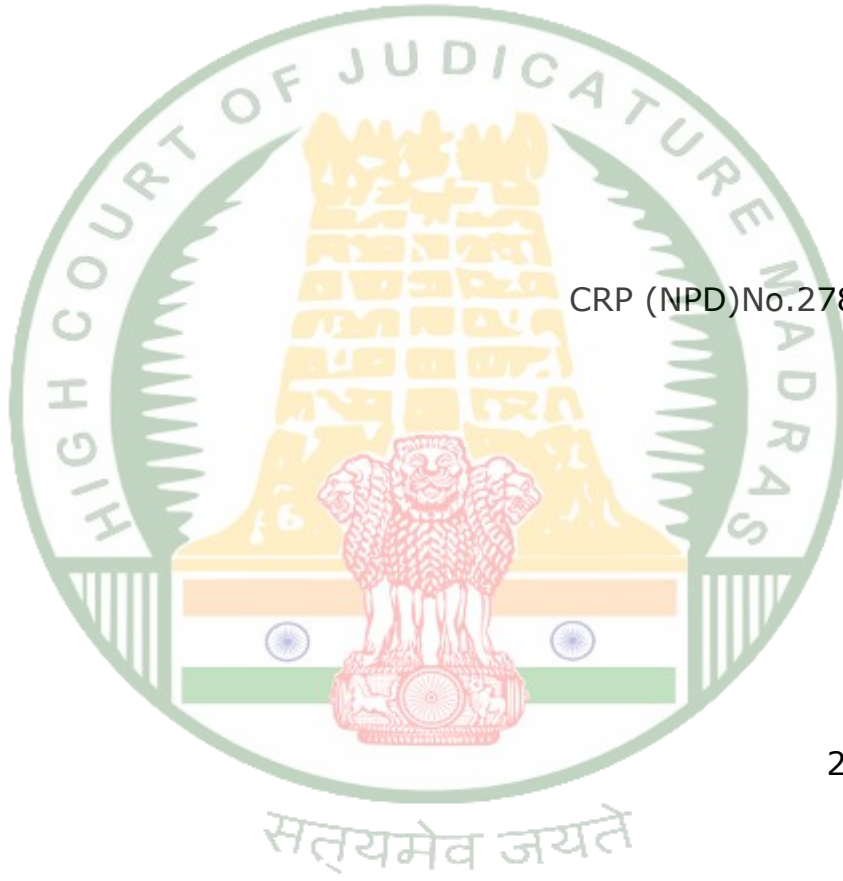
To
The Principal District Judge,
Namakkal.

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ABDUL QUDDHOSE, J.

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CRP (NPD)No.2782 of 2014

26.06.2019

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