

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R.SURESH KUMAR

C.R.P.(NPD)No.3115 of 2019 and
C.M.P.No.20410 of 2019

Balakrishnan

... Petitioner

Vs.

1.Ezhil Raja
2.Illango

... Respondents

Prayer: Petition filed under Section 115 of Civil Procedure Code to set aside the order and decree dated 03.08.2019 made in I.A.No.444/2019 in unnumbered A.S.No. /2019, on the file of Principal Sub Judge at Puducherry.

For Petitioner : Mr.A.Gouthaman

ORDER

This revision petition has been filed against the fair and decretal order passed in I.A.No.444/2019 in unnumbered A.S.No. /2019 on the file of the Principal Sub Judge, Puducherry.

2.As against the suit in O.S.No.263 of 2009 where a decree was passed on 03.02.2018, dismissing the suit filed by the plaintiffs/ respondents for specific performance, the plaintiffs had to prefer an appeal in time before the First Appellate Court, where it is a claim of

the plaintiffs/appellants that, since the 1st plaintiff is the French National, he used to visit France very often. Therefore, he could not be in India to pursue the appeal as such he had executed a power on 20.08.2018 in favour of the Power of Attorney Holder. Thereafter, the decree copy as well as the judgment was made ready. After obtaining the same, the Power of Attorney Holder filed the Appeal Suit on 04.04.2019. In the meanwhile, there has been a delay of 413 days in filing the said appeal. Therefore, in order to condone the said delay, an application was filed in I.A.No.444 of 2019 under Section 5 of the Limitation Act and the said application, having been considered by the Court below i.e., the First Appellate Court, has been allowed through the impugned order dated 03.08.2019, as against which, the present revision has been filed by the defendant/revision petitioner.

3.I have heard Mr.A.Gouthaman, learned counsel for the petitioners and I have perused the materials placed before this Court.

4.The learned counsel for the petitioners would submit that decree was dated 03.02.2018 and the power claimed to have been executed on 20.08.2018, whereas the appeal was filed on 04.04.2019

with a delay of 413 days and in between, what the plaintiff had done, why they delayed in executing the Power of Attorney and even after executing the Power of Attorney, why the Power of Attorney Agent has not chosen to file an appeal in time atleast immediately after the execution of Power of Attorney, has not been properly explained in the affidavit filed in support of the application before the First Appellate Court and the learned Judge, in the First Appellate Court, without having gone into those aspects, has allowed the said application erroneously, therefore, the same is liable to be interfered in this revision.

5.I have gone through the order passed by the learned Judge where the learned Judge has taken note of the fact that the 1st plaintiff, who was the main contestant in the suit, is admittedly a Foreign National i.e. French Citizen, therefore, he used to visit France very often. Only in that context, since he could not be in India in pursuing the appeal, he seems to have executed a Power of Attorney on 20.08.2018 and in the meanwhile, after getting the certified copy of the decree as well as the judgment of the lower Court as per the instructions of the Principal, the Power of Attorney Holder filed the suit

before the First Appellate Court where there has been a delay of 413 days and in order to condone the same, the present application under Section 5 of the Limitation Act was filed and these aspects have been considered by the lower Court.

6. Moreover, the lower Court, in the Judgment impugned at para 6, has stated that, when the petitioners i.e., the appellants/plaintiffs have already lost their suit before the lower Court, which is a suit for specific performance, if they have not been permitted to pursue their appeal under technical reason of delay at the threshold, their right would get defeated, therefore, the learned Judge has allowed the I.A.

7. It is a settled proposition that, the substantive right of the party cannot be defeated by mere technicality and therefore, there is every justification on the part of the First Appellate Court in allowing the said application in condoning the delay, as because of which, no prejudice would be caused to the respondents herein, as the said application was allowed on terms i.e., cost and therefore, this Court feels that there is no infirmity in the said order.

8.In that view of the matter, this Court feels that no interference is warranted in the impugned order by way of this revision. Accordingly, this revision fails and hence the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

9.However, considering the facts and circumstances of the case, as the delay was 413 days, the cost of Rs.1000/- awarded by the First Appellate Court is enhanced to Rs.5000/-, which shall be paid within a period of two weeks from the date of receipt of a copy of this order.

23.09.2019

Index: Yes/No
Speaking Order: Yes/No

Sgl

To

The Principal Sub Judge,
Puducherry.

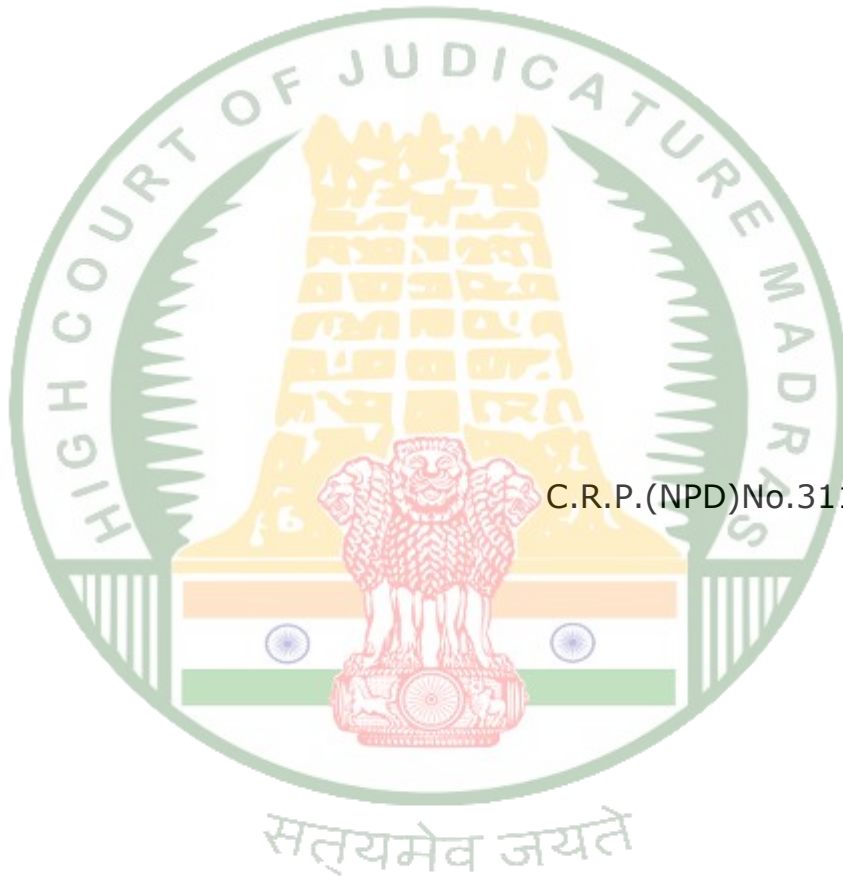
सत्यमेव जयते

WEB COPY

C.R.P.(NPD).No.3115 of 2019

R.SURESH KUMAR, J.

Sgl



C.R.P.(NPD)No.3115 of 2019

WEB COPY

23.09.2019