

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (NPD) No. 3842 of 2019

and

C.M.P. Nos. 25346 of 2019

Mr. S. Subramani (since deceased)

1. S. Chandra
2. S. Saravanan
3. S. Vijayalakshmi
4. S. Geetha

... Petitioners

-Vs-

1. D. Shanthi
2. M. Krishnaveni
3. Jayalakshmi

... Respondents

Prayer : Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 08.04.2019 made in I.A. No. 10142 of 2018 in O.S. No. 7820 of 2012 passed by the Hon'ble Judge, VI Assistant Judge, City Civil Court, at Chennai.

For Petitioner : Mr. A. M. Krishnamoorthy

For Respondents : Mr. M. Santhanamari for R2 and R3

ORDER

This Civil Revision Petition has been filed against the fair and decretal order made in I.A. No. 10142 of 2018 in O.S. No. 7820 of 2012 on the file of the VI Assistant Judge, City Civil Court, Chennai, by order dated 08.04.2019.

2. Before the trial Court, the petitioners / plaintiffs filed a suit for permanent injunction and the said suit posted for trial on 02.08.2017 and the plaintiffs could not be able to present and therefore, they were called absent and the suit was dismissed for default. Thereafter, in order to restore the suit, an application had to be filed. When they filed the application, there has been already a delay of 184 days, in order to condone the said delay, the application under Section 5 of the Limitation Act has been filed. The present application since has been allowed by the Court below through the impugned order, aggrieved over the same, the present revision petition has been filed.

3. Heard Mr. A. M. Krishnamoorthy, learned counsel

appearing for the revision petitioners and Mr. M. Santhanamari, learned counsel appearing for the second and third respondents.

4. I have gone through the reasons stated in the affidavit filed in support of the IA before the trial Court where, the respondents / plaintiffs stated that on 20.12.2017, the plaintiffs were called absent and the suit was dismissed for default and the reasons for non-appearance on 13.12.2017 and 20.12.2017 by the plaintiffs before the Court below was that, the second petitioner's husband K. Muthu was diagnosed with advanced stage of Rectum Cancer and he was admitted in the Government Rajiv Gandhi General Hospital during that time and hence the entire family members were fully pre-occupied with the hospital activities. After some improvement in the health condition in February 2018, the plaintiffs / respondents seems to contacted the counsel and then only they came to know that, the suit was dismissed for default.

WEB COPY

5. However before they take steps to file a petition to restore the suit, the health condition of the second petitioner / plaintiff's husband deteriorated, in the meanwhile, the learned counsel appearing for the plaintiffs also had gone for a foreign trip to USA and he returned back only on 18.06.2018 and only thereafter, the plaintiffs contacted the counsel and taken step to file petition to restore the suit, that is how the delay occurred.

6. Based on all these reasons cited by the learned counsel appearing for the respondents / plaintiffs, the learned Judge allowed the said IA for condonation of delay of 184 days.

7. I have considered the said submissions made by both sides and perused the materials placed before this Court including the reasoning given by the respondents / plaintiffs for the said delay.

8. Since health reasons have been gone and also the delay of 184 days, for which, proper explanation has been given by the respondents / plaintiffs in paragraph Nos. 8 to 12 of the affidavit filed in

support of the application before the trial Court and this Court finds that, there is no infirmity in the order passed by the trial Court in allowing the said application, which is impugned herein.

9. Since the delay was 184 days i.e., more than six months and by thus, the revision petitioners / defendants has been put into task and the present revision petition has already been filed by the revision petitioners / defendants, in order to compensate such prejudice concern, cost could have been allowed by the trial Court, while allowing the application through the impugned order.

10. This aspect has not been disputed by the learned counsel appearing for the respondents / plaintiffs before this Court.

11. In that view of the matter, this Court while confirming the order passed by the trial Court in allowing the petition, directed the respondents / plaintiffs to pay the cost of Rs. 3,000/- (Rupees Three Thousand Only) to the revision petitioners before the lower Court and on this condition, the order impugned is confirmed.

R. SURESH KUMAR, J.

vji

12. Accordingly, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed

27.11.2019

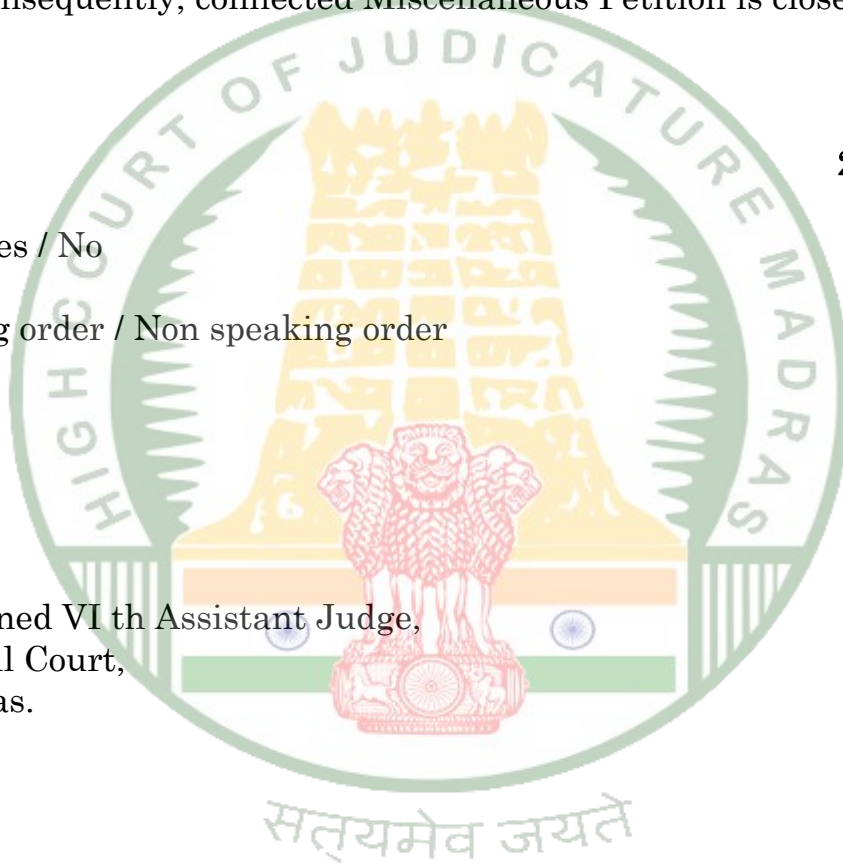
Index: Yes / No

Speaking order / Non speaking order

vji

To

The learned VIth Assistant Judge,
City Civil Court,
at Madras.



WEB COPY

C.R.P. (NPD) No. 3842 of 2019
and
C.M.P. Nos. 25346 of 2019