

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2019

C O R A M

THE HON'BLE MR. JUSTICE M.S. RAMESH

C.R.P.[NPD] No.4653 of 2017

and

C.M.P. No. 21953 of 2017

Ms.Annapoorani

... Petitioner

Vs

1.Ms.Mohana

2.Minor.Abiram

Rep. by Guardian Mother Mohana

3.Ms.Devi

4.Ms.Saranya

... Respondents

Prayer : Civil Revision Petition filed under Section 115 of Civil Procedure of Code, to set aside the fair order and Decreetal order in I.A. No. 443 of 2016 in O.S. No. 55 of 2015 dated 07.08.2017 passed by the Sub Court, Sathyamangalam and allow this Civil Revision Petition.

For Petitioner : Mr.A.Mohamed Ismail

For R1 & R2 : Mr. N. Chinnaraj

For R3 & R4 : No Appearance

ORDER

Citing Jaundice as medical ailment the Petitioner had filed an application to condone the delay of 131 days to set aside the ex-parte decree passed in O.S. No. 55 of 2015 by the Sub Court, Sathyamangalam.

The Court below had rejected the application, by observing that the petitioner was in a position to execute a mortgage deed before the Axis

Bank and that the reason adduced for condoning the delay of 131 days was

not a sufficient cause to condone the delay, which is under challenge in the present revision petition.

2. On a prima facie reading of the order under challenge before this court, I do not find any infirmity in the observation made by the trial Court and that the delay of 131 days has not been properly explained and as such the order cannot be strictly found fault with.

3. The learned counsel for the respondents submitted that there is no infirmity in the findings of the trial court, since the mortgage deed executed by the petitioner herein evidences that he was in a position to contact his counsel and also attended the relatives marriage and therefore, she is not extended with any leniency.

4. Nevertheless, in cases where the application to condone the delay has been made with inordinate delay, the merits of the case, as found in the pleadings, requires also to be looked into, so as not to deprive the petitioner from getting any relief in the suit. In the instant case, the petitioner herein is the first defendant in a suit for partition of two items of properties. Accordingly, the learned counsel for the petitioner, by taking into account the relationship between the parties and their nexus with regard to the title over the suit properties, would submit that he has got a

triable and arguable issue before the trial Court.

5.Taking into account that the suit has been filed for the relief of partition and by rejecting the present Civil Revision Petition would deprive the petitioner's right over the suit property, this court is inclined to take a lenient view by putting the petitioner on terms.

6.In the light of the above observations, the order dated 07.08.2017 passed in I.A. No.443 of 2016 in O.S. No. 55 of 2015 by the Sub Court, Sathyamangalam is set aside, on condition that the petitioner pays a sum of Rs.15,000/- [Rupees Fifteen Thousands Only] to the Respondents 1 and 2 herein and file a memo evidencing the proof of such payment before the trial court. Such an exercise of making the payment of the cost shall be done within a period of 10 days from the date of receipt of a copy of this order. On such payment, the delay of 131 days shall stand condoned.

7.This Civil Revision Petition stands ordered, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

07.01.2019

vsn/maya

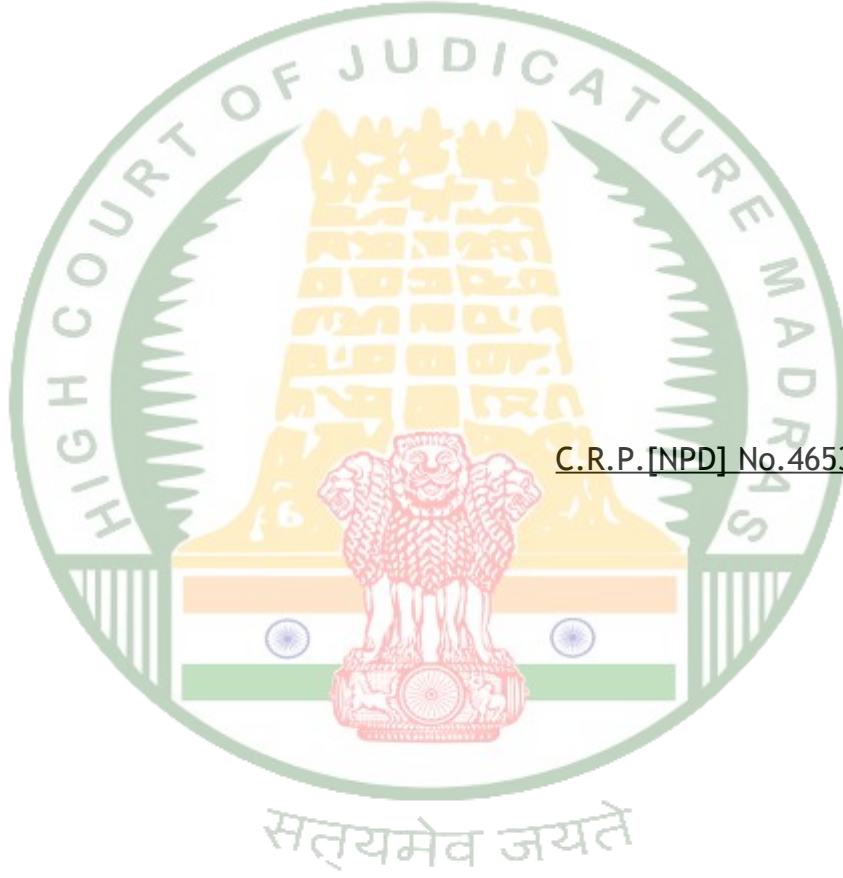
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Internet : Yes/No
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M.S.RAMESH, J.

vsn/maya

To

1. The Sub Court, Sathyamangalam.



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