

C.M.P.No.14964 of 2017 in C.M.A.No.SR66325 of 2017

T.RAJA, J.

This civil miscellaneous petition has been filed seeking to condone the delay of 330 days in filing the C.M.A.No.SR66325 of 2017.

2. Learned counsel for the petitioners pleaded that originally, as against the decretal order dated 28.1.2016 passed in I.A.No.577 of 2015 in O.S.No.43 of 2014 on the file of the learned Principal District Judge, Namakkal, the petitioners were wrongly instructed to file a civil revision petition under the impression that the decretal order was passed under Order IX Rule 7 of C.P.C., and accordingly, the civil revision petition was also filed on 11.8.2016 in S.R.No.59022 and thereafter, the papers were returned for want of the decree passed in the main suit. Only thereafter, on receipt of the decree, the petitioners were advised to file the civil miscellaneous appeal. In the meanwhile, the consequent delay of 330 days has occurred, which is neither wilful nor wanton, but only due to the bona fide mistake committed by the counsel. Therefore, for the mistake committed by the counsel, the litigants cannot be penalised. Hence the aforementioned delay, which is neither wilful nor wanton, is to be condoned, it is pleaded.

3. Per contra, Mr.N.Manokaran, learned counsel for the respondent, heavily opposing the prayer, stated that there was a delay in filing the civil revision petition itself on 11.8.2016. Secondly, it is not open to the petitioners to contend that only because of filing of the civil revision petition wrongly, the delay in filing the appeal should be condoned. The reason being that even before the trial Court, the petitioners have not co-operated with the respondent for the speedy disposal of the suit for partition. When detailed reasons have been recorded by the trial Court, this petition is liable to be dismissed.

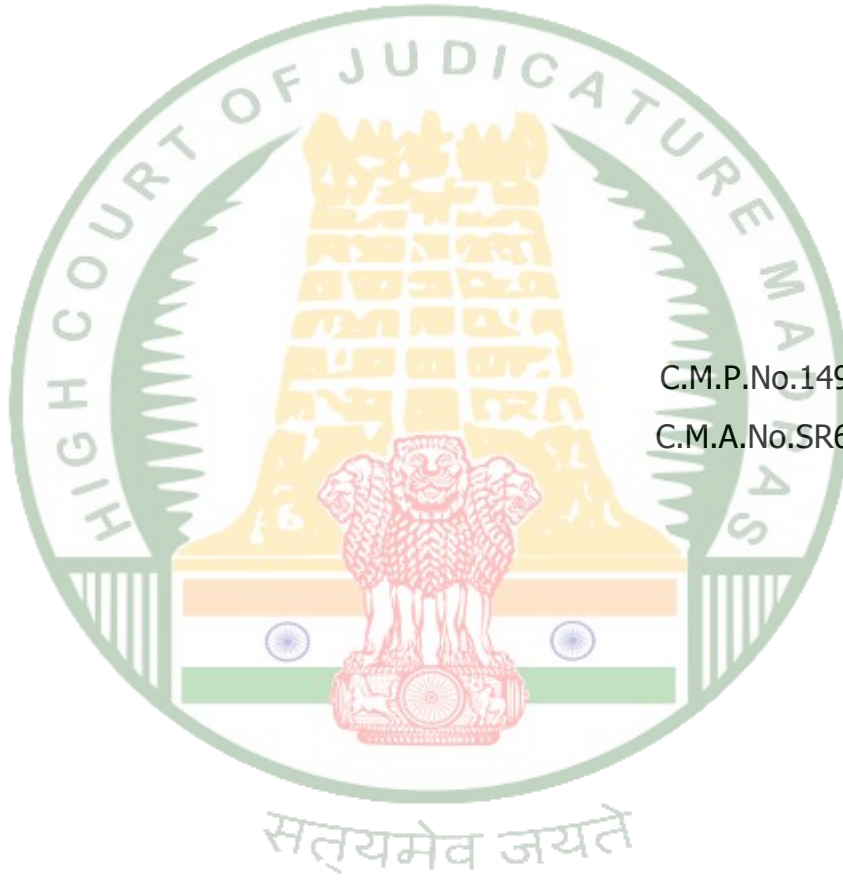
4. But this Court hardly finds any merit or justification on the objection raised by the learned counsel for the respondent. When it is claimed that on the wrong advise given by the counsel, the civil revision petition was filed on 11.8.2016 in S.R.No.59022 and after return of the papers by the Registry, on realising the said mistake committed by the counsel, they have been advised to file the present civil miscellaneous appeal. Hence, accepting the said reason, the delay is condoned and the civil miscellaneous petition stands allowed.

11.06.2019

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