



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED : 24.07.2019  
CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P. (PD) (MD) No.1186 of 2019  
and  
C.M.P (MD) No.6547 of 2019

M.Kannan

... Petitioner/Petitioner/Plaintiff

Vs.

1.K.Loganathan

2.L.Pushpam

3.K.Thiyagarajan

4.T.Vijaya

5.The President

Koothoor Panchayat,  
having office at Koothoor Panchayath Union,  
Mannachanallur Taluk,  
Trichy District.

6.The Union Commissioner,  
having office at  
Manmahanallur,  
Trichy District.

7.The Tahsildar  
Taluk Office at Manachallur,  
Trichy District.

8.The District Collector,  
Collector Office.  
Trichy-620 001.

... Respondents/Respondents/Defendants

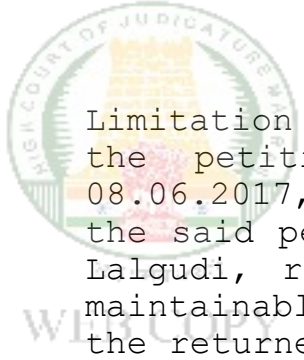
**PRAYER:-** Civil Revision Petition filed under Article 227 of the Constitution of India, to number the unnumbered I.A.SR No.2624 of 2019 in O.S.No.268 of 2008 on the file of the learned District Munsif Court, Lalgudi.

For Petitioner : Mr.D.Selvanayagam

ORDER

This Civil Revision Petition has been filed to number the unnumbered I.A.SR No.2624 of 2019 in O.S.No.268 of 2008 on the file of the learned District Munsif Court, Lalgudi.

2.The petitioner is the plaintiff in O.S.No.268 of 2008 on the file of the learned District Munsif, Lalgudi. During the pendency of the suit, he filed an application under Section 5 of the



Limitation Act praying to condone the delay of 698 days in restoring the petition in I.A.No.90 of 2017, which was dismissed on 08.06.2017, for non payment of batta for D3 and D4. After receiving the said petition on 07.06.2019, the learned District Munsif Court, Lalgudi, returned the said petition stating how this petition is maintainable and the only remedy is proper appeal. After receiving the returned petition, on 11.06.2019, the petitioner represented the said application, with the following explanation:-

*This application is under Section 5 of Limitation Act which is filed to restore the earlier application which was dismissed for default. Hence, there is no appeal permission no need to file an appeal. This Court has powers to entertain this application.*

3.Even after receiving the said application, as second time, the learned District Munsif, Lalgudi, on 14.06.2019 once again returned the same by mentioning the following defects:-

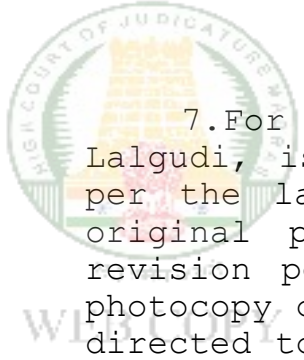
*Since order passed on merits, this petition do not maintainable and the remedy in proper appeal.*

Only in the said circumstances, the petitioner has approached this Court with the present civil revision petition.

4.Today, when the revision petition is taken up for hearing, the learned counsel appearing for the petitioner would contend that after returning the application, the learned District Munsif, Lalgudi, has examined the witness produced on the side of the plaintiff and defendants. However, she has not permitted to cross examine the witness on behalf of the D3 and D4. He would further contend that the relief of mandatory injunction has been prayed only against the said D3 and D4 and thereby, restoring the suit against D3 and D4 is necessary, for better adjudication.

5.Considering the said submissions, it is true that the application submitted by the petitioner was returned by the learned District Munsif, Lalgudi, lastly on 14.06.2019. Thereafter, within a month, she progressed the trial. Since the prayer sought by the petitioner is against the defendants 3 and 4, the presence of those parties is necessary for adjudication. However, only for the negligence committed by the Advocate at the time of restoring the suit, the dismissal order passed against the D3 and D4, cannot be taken into account.

6.In otherwise, if really the petition is not having any merits under the provision of law, it is the duty of the Presiding Officer to reject the petition by passing the separate order. In spite of that, refused to dispose the petition on merits is unnecessary. Only if the petition is disposed on merits, the petitioner is having opportunity to take the matter to higher forum. Without adopting the same, mere returning the petition for formal reason, is unnecessary. Hence, I am of the considered opinion that it is appropriate to give some direction to the learned District Munsif, Lalgudi in this regard.



7. For the forgoing reasons, the learned District Munsif, Lalgudi, is directed to dispose of the petition only on merits as per the law laid down. The Registry is directed to return the original petition and affidavit, enclosed along with the civil revision petition within a period of one week, after retaining a photocopy of the same. After receiving the same, the petitioner is directed to present the said petition before the learned District Munsif, Lalgudi, within a period of one week from the date on which, he received the petition from the Registry of High Court. After receiving the petition, the learned District Munsif, Lalgudi, is directed to dispose the said petition within a period of 15 days, thereafter.

8. With the above directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

The District Munsif, Lalgudi.

+1 CC to M/s.D.SELVANAYAGAM, Advocate ( SR-77529[F] dated 25/07/2019 )

COPY TO:  
THE SECTION OFFICER,  
E.R. SECTION,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

C.R.P. (PD) (MD) No.1186 of 2019  
and  
C.M.P (MD) No.6547 of 2019  
24.07.2019

CP  
JM/02.08.2019/3P-5C