

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (NPD) No.1691 of 2010
and M.P.No.1 of 2010

1.Mrs.Krishnaveni
2.Yuvaraj
3.Varadaraj
4.Ms.Bharathi
5.Subramani

..Petitioners

Vs

1.Murugesan
2.Kanniappan
3.Marimuthu
4.Appun

....respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 11.02.2010 passed by the District Munsif Court, Tambaram in I.A.No.1635 of 2009 in O.S.No.163 of 2008.

For Petitioners : Mr. Ravi Kumar Paul, Sr.Counsel for
M/s.Paul and Paul
For Respondents : No Appearance

ORDER

This Civil Revision Petition has been filed against Fair and decreetal order dated 11.02.2010 passed by the learned District Munsif Court, Tambaram in I.A.No.1635 of 2009 in O.S.No.163 of 2008.

2. The petitioners filed a suit against the respondents in O.S.No.163 of 2008 on the file of the District Musif Court, Tambaram. In the said suit, the first respondent after filing written statement, was remained ex parte. Subsequently, he filed a petition to set aside the ex parte decree, for which there was a delay of 227 days in filing the application to set aside the ex parte decree dated 23.03.2009. That petition was allowed and the delay was condoned by the trial Court. Challenging the said order condoning the delay of 227 days, the petitioners are before this Court by way of the present revision petition.

3. Though the respondents were served and their names were also printed in the cause list, none appeared on behalf of the respondents. The learned counsel for the petitioners would submit that the respondents have

not stated any reason for that delay except the first respondent was suffering from jaundice. Even, they have not examined any witness and also not stated any medical reason in the affidavit. Therefore, the reasons assigned were not satisfactory. However, he has submitted that after allowing this petition, during the pendency of the Civil Revision Petition, the petition to set aside the ex parte decree was dismissed. Therefore, nothing survives for consideration in this revision.

4. Heard, the learned counsel for the petitioners. I have perused the entire records. On a careful reading of the affidavit filed by the petitioner in I.A.No.1635 of 2009 in O.S.No.163 of 2008 and the counter affidavit filed by the respondents, and also the learned counsel for the petitioners herein has clearly stated that due to jaundice, the first respondent could not contact his counsel and not appeared before this Court on a particular day, therefore, he came to be set exparte. Though the learned trial Judge has stated that no medical proof has been filed, however, in order to give opportunity, the delay was condoned. So far as the petition to condone the delay is concerned, it is purely discriminatory power of the Court below and unless the Court below exercised its discretionary power arbitrarily and unjustly, there is no scope to interfere with such order in this revision. Though the delay is only

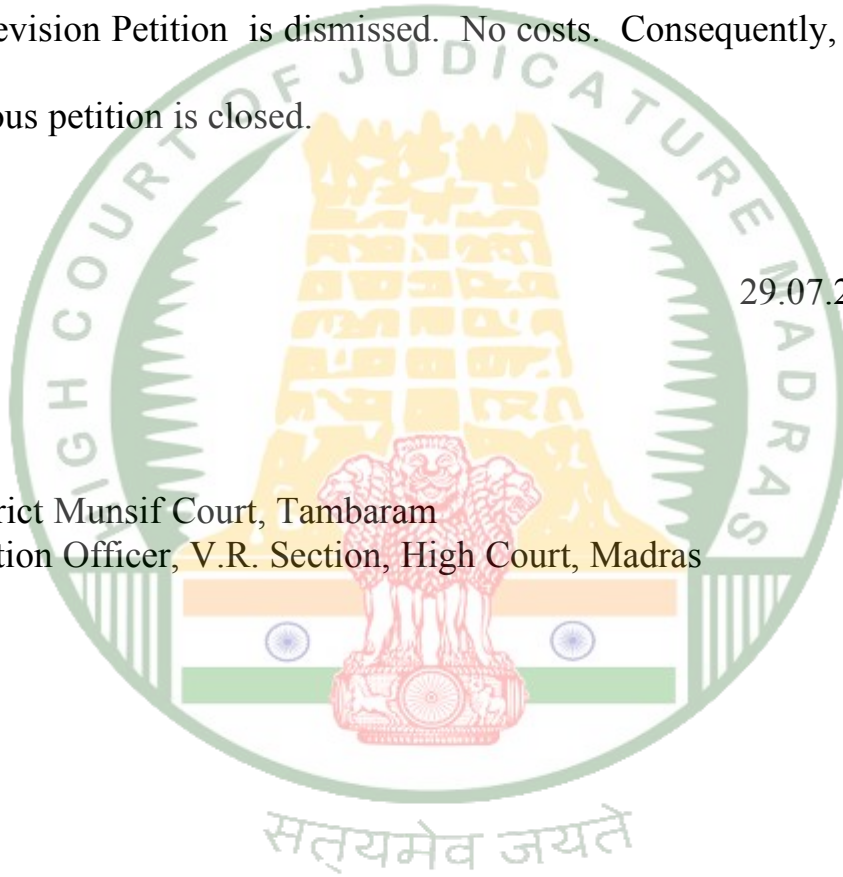
227 days and despite the respondents have not assigned any sufficient reason, but the trial Court was convinced with the reasons assigned by the respondents and therefore, condoned the delay. Therefore, this Court does not find any perversity in the order passed by the trial Court. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

29.07.2020

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To

1. The District Munsif Court, Tambaram
2. The Section Officer, V.R. Section, High Court, Madras



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P.VELMURUGAN,J.
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