

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2020

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

**C.R.P(NPD)No.3592 of 2010
and M.P.No.1 of 2010**

Mahalakshmi

...Petitioner

Versus

1.Umapathy
2.Selvam

...Respondents

This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure praying to set aside the order & decretal order dated 29.06.2010 passed by the District Judge, Thiruvannamalai District in I.A.No.34 of 2007 in C.M.A.No.Nil/2007.

For Petitioner

सत्यमेव जयते
: Mr.K.G.Senthilkumar

For Respondent - 1

: No Appearance

Respondent - 2

: Given up
vide order dated 19.11.2019

ORDER

The present Civil Revision Petition has been filed challenging the order dated 29.06.2010 passed by the learned District Judge, Thiruvannamalai in I.A.No.34 of 2007 in C.M.A.No.Nil/2007, in and by which, the learned District Judge dismissed the Interlocutory Application filed by the petitioner herein for condoning the delay of 308 days in filing the above unnumbered Civil Miscellaneous Appeal.

2. It is the case that the first respondent filed a suit in O.S.No.111 of 1999 against the second respondent before the Sub Court, Cheyyar and the said suit was decreed in favour of the first respondent. The first respondent therefore filed O.E.P.No.55 of 1999 against the second respondent for the recovery of decretal amount.

WEB COPY

2.1 The suit property was purchased by the second respondent through sale deed dated 07.04.1998. Subsequently, the second respondent

had mortgaged the same for Rs.1,00,000/- in favour of one Murugan vide Mortgage Deed dated 07.04.1998. The said Mortgage Deed was redeemed on 13.10.1998 and then the petitioner had purchased the said property from the second respondent. Thereafter, the petitioner had been in possession and enjoyment of the property as a rightful owner.

2.2 While so, on 24.06.2000, the petitioner came to know that the suit property was attached by the first respondent vide an order of attachment dated 27.01.2000 and the same is likely to be sold in Court auction. Therefore, the petitioner filed O.E.A.No.22 of 2000 before the Subordinate Court, Cheyyar, however, the same was dismissed for default on 26.09.2005. Aggrieved by the said order, the petitioner filed O.E.A.No.45 of 2005 to restore O.E.A.No.22 of 2000. But, O.E.A.No.45 of 2005 was also dismissed by the learned Subordinate Judge, Cheyyar vide order dated 10.07.2006.

WEB COPY

2.3 Thereafter, due to a wrong legal advice, the petitioner filed a Civil Revision Petition before this Court in C.R.P.No.SR85052 of 2006 on

26.09.2006 and the same was returned by this Court. Then, she filed an unnumbered Civil Miscellaneous Appeal on 04.06.2007 before the District Court, Thiruvannamalai. Hence, there was a delay of 308 days in filing the said Appeal. Therefore, in order to condone the delay of 308 days, the petitioner filed I.A.No.34 of 2007 before the District Court, Thiruvannamalai, however, the said Application was dismissed on 29.06.2010. Aggrieved by the order of dismissal, the petitioner has preferred the present Civil Revision Petition.

3. The learned counsel for the petitioner submitted that immediately after the dismissal of O.E.A.No.45 of 2005 on 10.07.2006, instead of filing a Civil Miscellaneous Appeal, due to some wrong advice given by someone, the petitioner preferred a Civil Revision Petition in C.R.P.No.SR85052 of 2006 before this Court on 26.09.2006 and that there was a delay of 308 days in filing the C.M.A before the District Court, Thiruvannamalai. However, without considering the reasons stated by the petitioner for the delay of 308 days in filing the said C.M.A, the Appellate Court dismissed the condone delay application filed by the petitioner herein. He also produced a copy of

the return papers of C.R.P.No.SR85052 of 2006 before this Court. He therefore prayed that the present Civil Revision Petition may be allowed since the delay is neither willful nor wanton.

4. Despite the name of the respondents being printed in the cause list, none appeared on behalf of them.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. From a perusal of the impugned order, it is seen that the condone delay application filed by the revision petitioner herein was dismissed for the reason that the petitioner except saying that she had preferred a Civil Revision Petition in C.R.P.No.SR85052 of 2006 before this Court and the papers of the said C.R.P were returned, neither filed a copy of return papers of the said C.R.P nor whispered about the date on which the papers of the said C.R.P was returned by this Court.

7. Though the revision petitioner filed the return papers of the C.R.P.No.SR85052 of 2006 before the Appellate Court, however, without looking into the same, the Appellate Court wrongly dismissed the application filed by the petitioner in I.A.No.34 of 2007 holding that the petitioner failed to produce the copy of the return papers of C.R.P.No.SR85052 of 2006.

8. From a perusal of the return papers of C.R.P.No.SR85052 of 2006 filed by the petitioner's counsel before this Court, it is seen that the revision petitioner instead of filing Civil Miscellaneous Appeal before the Appellate Court, she has wrongly preferred a Civil Revision Petition before this Court. Since she invoked the jurisdiction of this Court there was a delay of 308 days. Immediately after the return of C.R.P.No.SR85052 of 2006 by this Court, the petitioner filed a Civil Miscellaneous Appeal along with condone delay application before the Appellate Court. The reasons stated by the petitioner for the delay of 308 days in filing the C.M.A before the Appellate

Court are convincing. Therefore, this Court is of the view that the dismissal order rejecting the application filed by the petitioner for condoning the delay of 308 days in filing the C.M.A.No.Nil/2007 is not proper and the same is liable to be set aside.

9. Accordingly, this Civil Revision Petition is allowed and the order dated 29.06.2010 passed by the learned District Judge, Thiruvannamalai in I.A.No.34 of 2007 in C.M.A.No.Nil/2007 is set aside. Further, the District Court, Thiruvannamalai is directed to number the C.M.A.No.Nil/2007, if the papers are otherwise in order and dispose of the said C.M.A within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

04.02.2020

mrr

Index : Yes/No

To

The District Judge,
Thiruvannamalai District.

7/8

KRISHNAN RAMASAMY, J.,

mrr



C.R.P(NPD)No.3592 of 2010

WEB COPY

04.02.2020