

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).No.2577 of 2015

and

M.P.No.1 of 2015

Sankareeswari ... Petitioner

Vs.

1.Commissioner,
Commercial Taxes,
Ezhilagam, Chennai 5.

2.Commercial Tax Officer (Town)
Mohanur Road, Namakkal.

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal orders dated 10.10.2014 in I.A.No.17 of 2014 in unnumbered C.M.A.No. Nil of 2014 on the file of the Principal District Court, Namakkal.

For Petitioner : Mr.S.Kalyanaraman

For Respondents : Mr.Mohamed Rafiq (Taxes)
Special Government Pleader

ORDER

This Civil Revision Petition has been filed by the petitioner/appellant against the dismissal of her application in I.A.No.17 of 2014 in unnumbered CMA.No. Nil of 2014 on the file of the Principal District Judge, Namakkal dated 10.10.2014.

2. The petitioner herein had filed an application in I.A.No.17 of 2014 in unnumbered CMA.No. Nil of 2014 under Order 41 Rule 3-A of CPC and Section 101 of the Provincial Insolvency Act to condone the delay of 592 days in filing the appeal against the order passed by the Sub-Judge, Namakkal, in I.P.No.26 of 2000 dated 17.04.2012. The learned Principal District Judge, Namakkal, by the order dated 10.10.2014 had dismissed the application in I.A.No.17 of 2014. Feeling aggrieved, the petitioner/appellant has filed the present Civil Revision Petition.

WEB COPY

3. Heard, Mr.S.Kalayanaraman, the learned counsel for the petitioner and Mr.Mohamed Rafiq, the learned Special Government Pleader (Taxes) appearing for the respondents.

4. The learned counsel for the petitioner has submitted that the petitioner along with one J.Jaisankar, as her partner was carrying on business as a dealer in iron scrap in the name of Sri Mariamman Traders. He further submitted that during the course of business, the said partnership firm has purchased and sold iron scrap from various persons. The second respondent has arbitrarily assessed the turnover of Sri Mariamman Traders and has passed orders directing the firm to pay huge amounts as commercial tax. He further submitted that since the petitioner has suffered loss in the business, she could not pay the aforesaid amount and hence, the respondents took steps to arrest the petitioner and send her to Jail and hence, the petitioner was forced to file an insolvency application in I.P.No.26 of 2000 on the file of the Sub-Judge, to adjudge her as insolvent. But, the learned Sub-Judge by the order dated 17.04.2012 had dismissed the said petition. He further submitted that as against the said order, the petitioner has filed an appeal before the Principal District Judge, Namakkal, along with a petition in I.A.No.17 of 2014 to condone the delay of 592 days in filing the said appeal.

5. He further submitted that because of the loss suffered by the petitioner, in the business, she could not look after her family and

also could not contact her counsel to file the petition in time. He further submitted that she is suffering from some illness also and hence, she could not file the appeal in time and there was a delay of 592 days in filing the appeal and without considering the same, the learned Principal District Judge, Namakkal, had dismissed the said petition. He further submitted that the petitioner is having a chance of success in the appeal and hence, he prayed to allow this Civil Revision Petition and set aside the order passed by the learned Principal District Judge, Namakkal, in I.A.No.17 of 2014 and give an opportunity to the petitioner to vindicate her remedy in the Appellate Court.

6. Per contra, the learned Special Government Pleader (Taxes) has submitted that the learned Sub-Judge had dismissed the insolvency petition as not maintainable and that being so, the petitioner cannot file an appeal. He further submitted that the petitioner has not stated any valid reason for condoning the delay of 592 days in filing the appeal and taking into consideration of the aforesaid facts, the learned Principal District Judge, Namakkal, has rightly dismissed the said application and in the said order, this Court need not interfere and he prayed to dismiss this Civil Revision Petition.

7. A perusal of the order passed by the learned Sub-Judge, Namakkal, in I.P.No.26 of 2000 shows that against the assessment order passed by the respondents, the petitioner has filed an appeal before the Appellate forum and the same was dismissed. Further, the amount due to the respondents is a statutory due and in such a case, the provisions of Insolvency Act will not apply. This Court also raised a query to the learned counsel for the petitioner as to how, insolvency petition will lie with regard to the amount due to the Government.

8. The learned counsel for the petitioner has fairly conceded that insolvency petition will not lie with regard to the amounts due to the Government. When insolvency petition itself is not maintainable, it is a futile exercise for this Court to see whether the petitioner has stated any valid reason for condoning the delay of 592 days in filing the appeal.

9. A perusal of the the affidavit filed in support of the application in I.A.No.17 of 2014 shows that this petitioner has not stated any valid reason for condoning the delay of 592 days in filing the appeal. The petitioner has stated that she did not have money to conduct the case. In such a case, she could have approached the Legal Services Authority

to provide legal aid for filing appeal. But she has not adopted the said procedure. She also stated that she was unwell. But she has not even disclosed the nature of ailment. She has not produced any material to prove her illness. So, it appears that the reasons stated by the petitioner are very vague. The learned Principal District Judge, after considering the above said facts has rightly dismissed the said application as the petitioner has not properly explained the inordinate delay of 592 days in filing appeal. This Court does not find any infirmity in the said order. Hence, this Civil Revision Petition is liable to be dismissed.

10. In the result, this Civil Revision Petition is dismissed.

No Costs. Consequently, connected Miscellaneous Petition is also closed.

सत्यमेव जयते

10.11.2020

Internet : Yes/No
dna

WEB COPY

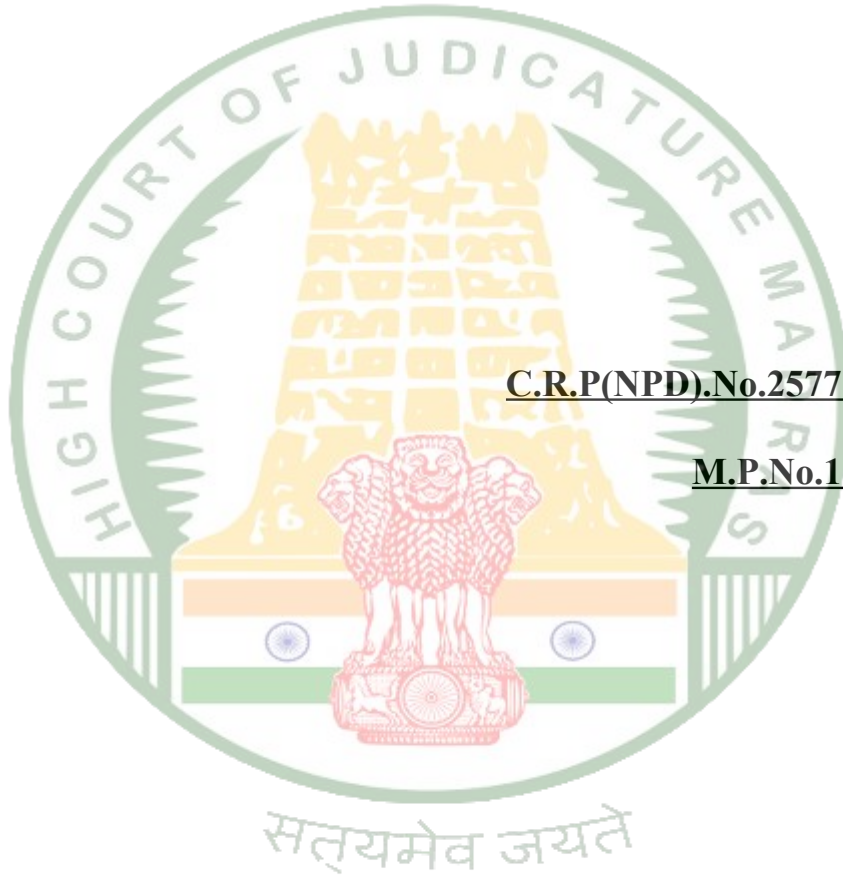
To

1.The Principal District Court,
Namakkal.

2.The Sub-Court, Namakkal.

CRP (NPD).No.2577 of 2015

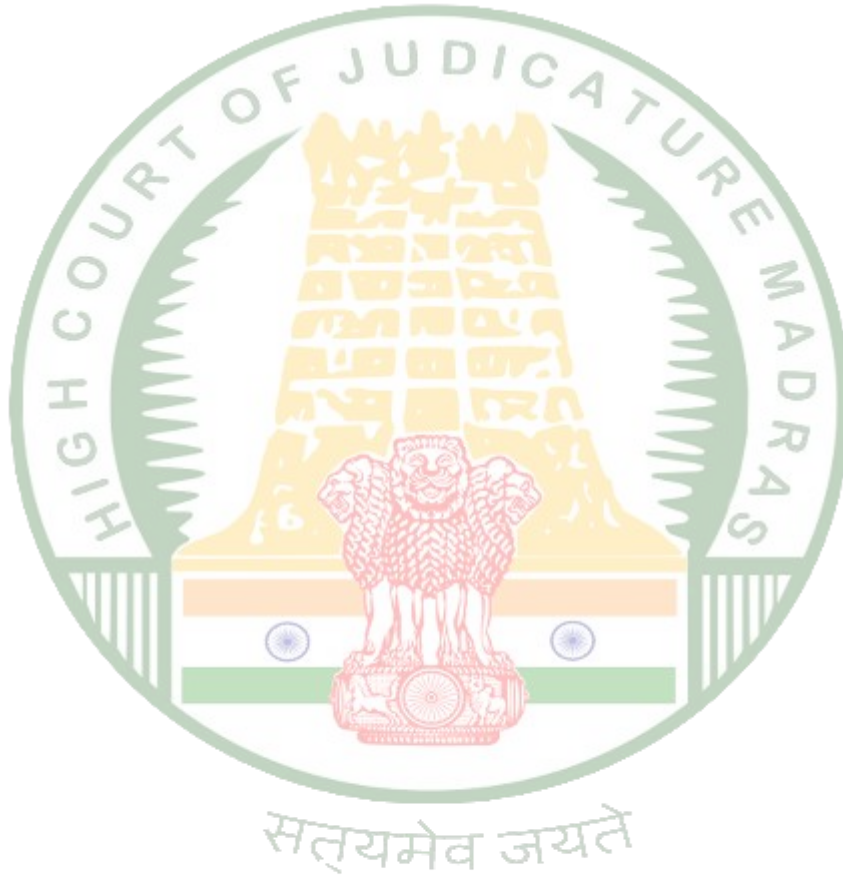
P.RAJAMANICKAM.J.,
dna



C.R.P(NPD).No.2577 of 2015
and
M.P.No.1 of 2015

WEB COPY

10.11.2020



WEB COPY