

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3260 of 2013
and M.P.No.1 of 2013

1.Jaya
2.Madhaiyan .. Petitioners/Defendants 1 and 2

Vs.

1.G.Kumar .. 1st Respondent/Plaintiff
2.Rajammal .. 2nd Respondent/4th defendant

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 16.10.2012 made in I.A.No.337 of 2012 in O.S.No.31 of 2008 on the file of the District Munsif Court, Palacode.

For Petitioners : Mr.Karthikeyan
for Mr.V.Nicholas

For R1 : No appearance

ORDER

The matter is heard through “Video-Conferencing”.

The Civil Revision Petition is filed against the fair and decretal order dated 16.10.2012 made in I.A.No.337 of 2012 in O.S.No.31 of 2008 on the file of the District Munsif Court, Palacode.

2.The petitioners are the defendants 1, 2 and 1st respondent is the plaintiff and 2nd respondent is the 4th defendant in O.S.No.31 of 2008 on the file of the District Munsif Court, Palacode. The 1st respondent filed the said suit for declaration and permanent injunction. When the suit was posted for trial, the petitioners and the 2nd respondent did not appear, they were set exparte and exparte decree was passed on 09.02.2011. The petitioners and 2nd respondent filed I.A.No.337 of 2012 to condone the delay of 362 days in filing the petition to set aside the exparte decree dated 09.02.2011. The learned Judge dismissed the petition.

3. Against the said order of dismissal dated 16.10.2012 made in I.A.No.337 of 2012 in O.S.No.31 of 2008, the petitioners have come out with the present Civil Revision Petition.

4. The learned counsel appearing for the petitioners contended that the learned Judge failed to exercise the power conferred on him, when declined to condone the delay. The petitioners have given valid and sufficient reason for condoning the delay. The petitioners have given reasons in the affidavit filed in support of the petition under Order IX Rule 13 C.P.C., which forms part of the record. The learned Judge failed to properly appreciate the scope of Section 5 of Limitation Act on facts and law. The petitioners have valid defence in the suit and prayed for setting aside the order of the learned Judge and allowing the Civil Revision Petition.

5. Though the 1st respondent has entered appearance through the counsel, there is no representation on behalf of him, when the matter is taken up for hearing.

6.Heard the learned counsel appearing for the petitioners and perused the entire materials available on record.

7.From the materials on record, it is seen that the petitioners and 2nd respondent filed I.A.No.337 of 2012 to condone the delay of 362 days in filing the petition to set aside the exparte decree. In the affidavit filed in support of the petition, the petitioners and 2nd respondent have not given any reason for condoning the delay. The contention of the learned counsel appearing for the petitioners that the petitioners have given reason in the affidavit filed in support of the petition to set aside the exparte decree, which is part of the record, is without merits as the said petition was not taken on file. Even otherwise in the said affidavit filed in the typed set of papers in the present Civil Revision Petition, the petitioners have admitted that communication from their advocate with regard to trial of the suit on 04.02.2011 was received by son of the 2nd petitioner. The petitioners have not stated that when the 2nd petitioner came from Bangalore for the festival. They have not stated the date of the

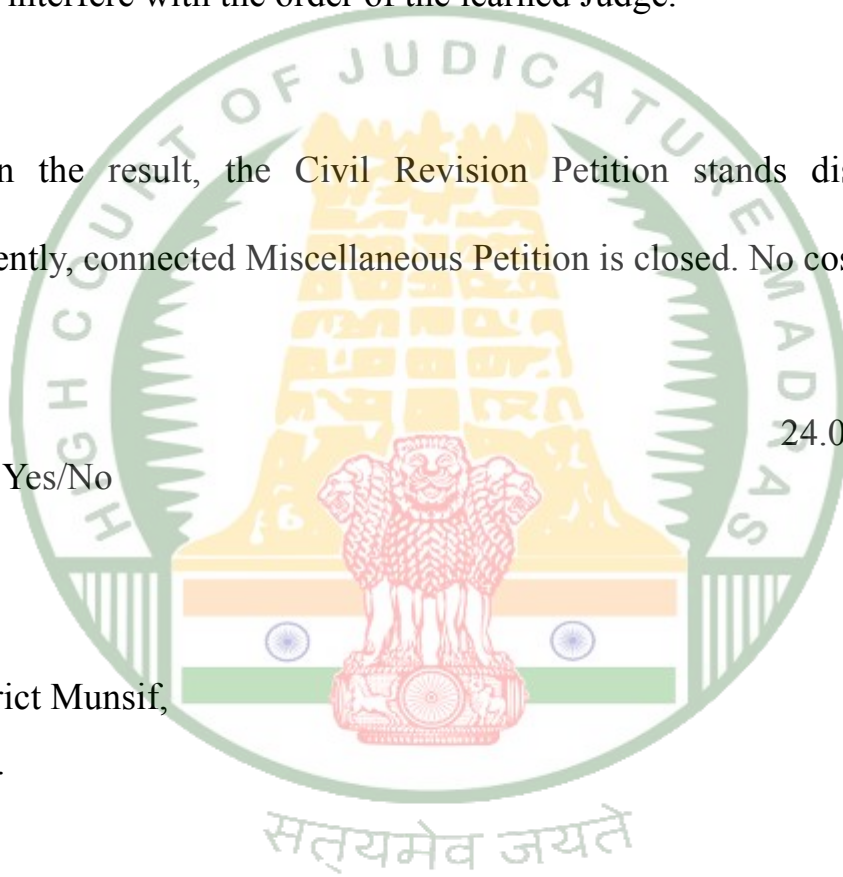
festival or whether all the petitioners have gone to Bangalore for business. The learned Judge considering the averments made in the affidavit, dismissed the petition by giving valid reason. There is no reason to interfere with the order of the learned Judge.

8.In the result, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

24.09.2020

Index : Yes/No
kj

To
The District Munsif,
Palacode.

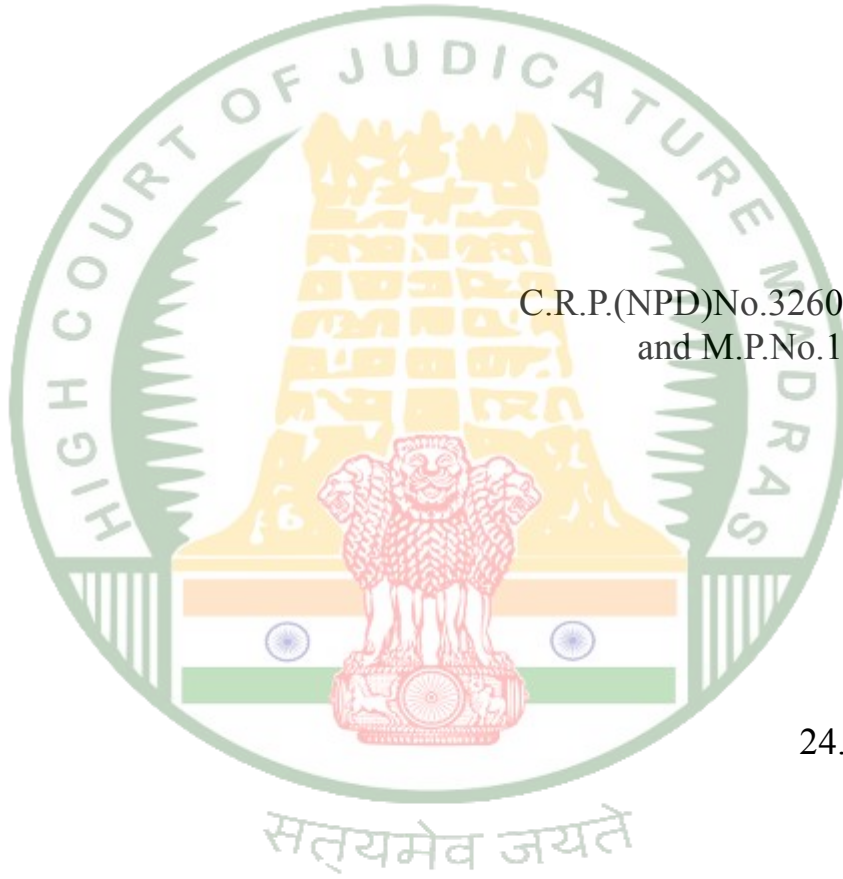


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V.M.VELUMANI, J.

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