

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P. (PD). No. 3335 of 2013

Mariappan

... Petitioner

Vs

1.H.R. Harikrishnan

2.D. Mallika

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 07.01.2013 made in I.A.No.82/2012 in A.S.CFR.No.590 of 2012 on the file of the Principal District Judge, Coimbatore.

For Petitioner : Mr. S. Mukunth

For Respondents : Mr. S.V. Pravin Rrathinam

ORDER

The matter is heard through "Video Conferencing".

The present Civil Revision Petition is filed to set aside the fair and decretal order dated 07.01.2013 made in I.A. No. 82 of 2012 in A.S.CFR. No.590 of 2012 on the file of the Principal District Judge, Coimbatore.

2. Heard Mr. S.Mukunth, learned counsel appearing for the petitioner as well as Mr.S.V.Pravin Rathinam, learned counsel appearing for the respondents and perused the materials available on record.

3. The petitioner is 1st defendant, the 1st respondent is the plaintiff and the 2nd respondent is the 2nd defendant in O.S.No.758 of 2009 on the file of the II Additional Sub Court, Coimbatore (Earlier O.S.No.1554 of 2007 on the file of the District Munsif Court, Coimbatore). The 1st respondent herein filed the said suit against the petitioner and 2nd respondent for recovery of possession and for damages. The suit was decreed on 01.02.2011. The petitioner filed

appeal along with I.A. No.82 of 2012 to condone the delay of 155 days in filing the appeal. According to the petitioner, even before the suit was decreed, he met with an accident on 23.02.2010 and due to accident and old age, he could not walk. In view of the same, he could not contact his Advocate and file appeal in time and hence, the delay of 155 days has occurred in filing the appeal. The delay is neither wilful nor wanton. The respondents filed counter affidavit and stated that the reason given by the petitioner is not true. The petitioner, even after the accident, was attending Court on every hearing. Further, in the E.P. proceedings filed by the respondents, the petitioner was set exparte on 10.11.2011. The petitioner filed petition to set aside the exparte order in E.P. during November, 2011. Subsequently, in E.P., the respondents took possession on 24.11.2011 and E.P. was terminated and prayed for dismissal of the petition.

4. From the materials on record, it is seen that the suit was decreed on 01.02.2011 and petitioner obtained copy of the decree and judgment on 11.07.2011. The petitioner filed appeal only in the month of January, 2012 with petition to condone the delay of 155 days, contending that due to the accident

on 23.02.2010, he could not walk and contact his Advocate in time and give instructions to file appeal. On the other hand, it is seen from the records that in the E.P. filed by the 1st respondent, the petitioner has filed petition to set aside the exparte order in the month of November, 2011, through Advocate. The petitioner has not explained for not filing the appeal during November, 2011 or immediately after entering appearance in the E.P. proceedings. The learned Judge has considered the documents filed by the petitioner with regard to the treatment and found that the petitioner has taken treatment only from 23.02.2010 to 10.03.2010 and from 24.03.2011 to 26.03.2011 and held that the petitioner has not given sufficient reason for condoning the delay and dismissed the petition.

5. It is well settled that the application for condoning the delay must be considered liberally and length of delay is not a criteria. The Court must see whether the parties have given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits. In the present case, the reason given by the petitioner is not

bonafide. The learned Judge has properly appreciated all the materials on record and dismissed the application by giving cogent and valid reason. There is no irregularity or illegality in the order passed by the learned Judge, warranting interference by this Court.

6. In the result, this Civil Revision Petition is dismissed. No costs.

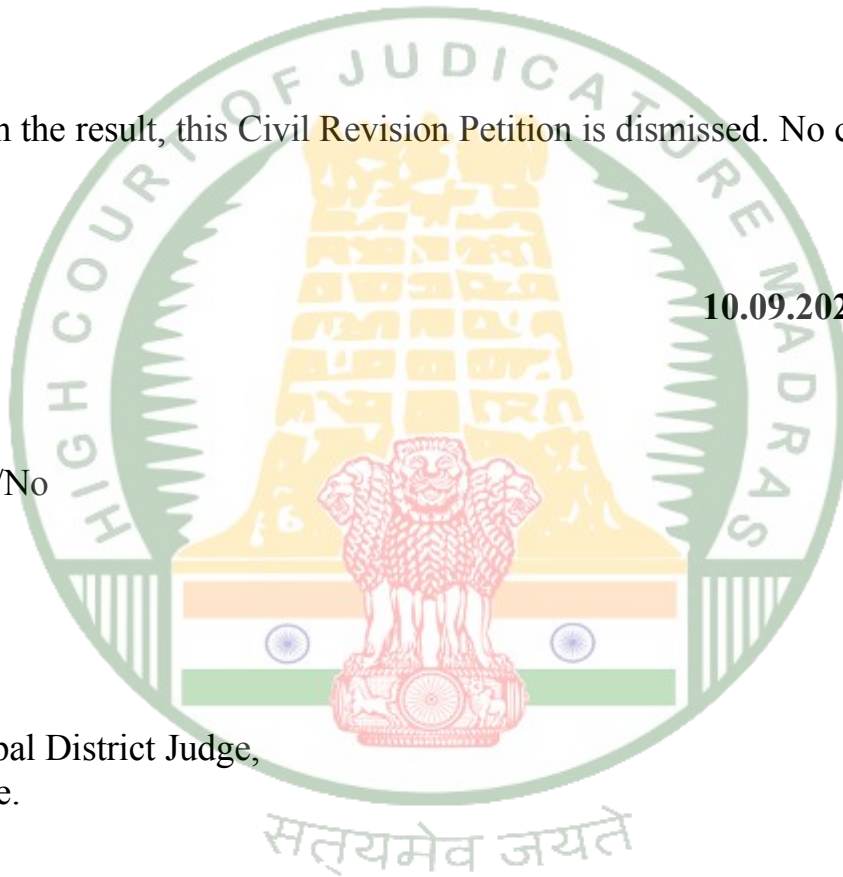
10.09.2020

gsa

Index: Yes/No

To

The Principal District Judge,
Coimbatore.



WEB COPY

C.R.P. (PD) No. 3335 of 2013

V.M.VELUMANI,J.

gsa



C.R.P. (PD). No. 3335 of 2013

WEB COPY

10.09.2020