

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2020

CORAM:

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

C.R.P. (NPD). No. 3583 of 2013
and M.P. No. 1 of 2013

R. Gandhi

... Petitioner

Vs

T. Elumalai

... Respondent

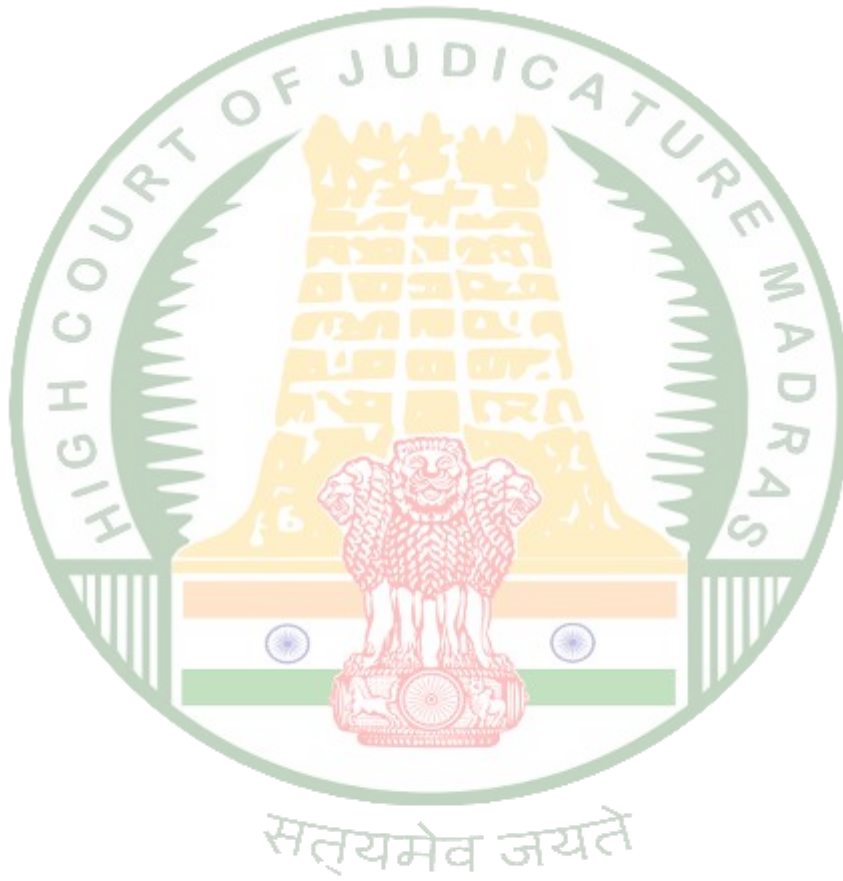
Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 17.07.2013 made in I.A. No.303 of 2012 in O.S. No. 239 of 2010 on the file of the Principal District Munsif Court, Tiruvannamalai.

For Petitioner : Mr. K.A. Ravindran

For Respondent : Ms. Prithvi
for Mr. S. Kaithamalai Kumaran

ORDER

The matter is heard through "Video Conferencing".



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The present Civil Revision Petition is filed to set aside the fair and decretal order dated 17.07.2013 made in I.A. No. 303 of 2012 in O.S. No. 239 of 2010 on the file of the Principal District Munsif Court, Tiruvannamalai.

2. The petitioner is defendant in O.S. No. 239 of 2010 on the file of the Principal District Munsif Court, Tiruvannamalai. The respondent filed the said suit for declaration and permanent injunction. After receipt of summon, the petitioner entered appearance through Advocate, but did not file written statement. He was set exparte on 14.12.2010 and exparte decree was passed on 03.02.2011. The petitioner filed I.A. No.303 of 2012 to condone the delay of 324 days in filing the petition to set aside the exparte decree. The learned Judge dismissed the Interlocutory Application, holding that the reason given by the petitioner is not true and petitioner has not approached the Court with clean hands.

3. Against the said order of dismissal dated 17.07.2013 made in I.A. No.303 of 2012 in O.S. No. 239 of 2010, the petitioner has come out with the present Civil Revision Petition.

4. The learned counsel appearing for the petitioner submitted that the petitioner, after entering appearance in the suit, applied for certified copies of document to prepare the written statement. In January 2011, he fell into a well and was seriously injured. He was admitted in JIPMER Hospital, took treatment for three months and underwent two operations. The Doctors advised him bed rest for six months. On 14.01.2012, he received a letter from his counsel and came to know about the exparte decree and immediately, filed the present petition. The learned counsel appearing for the petitioner further contended that the learned Judge did not consider the reason given by the petitioner properly. The learned Judge ought to have liberally considered the petition for condoning the delay to give an opportunity to the petitioner to contest the case on merits. The petitioner has given sufficient reason for the delay and prayed for allowing the Civil Revision Petition.

5. The learned counsel appearing for the respondent contended that the petitioner has given false reason for condonation of delay. He underwent treatment only for 10 days. He contested in the local body election in

October, 2011 and was elected as Member in the local body election and subsequently, as Vice-President. The petitioner knowing fully well about the suit, did not appear deliberately and exparte decree was passed. Even after knowing the exparte decree, he did not take any steps to set aside the same immediately. Only to drag on the proceedings, he has come out with the present petition and prayed for dismissal of the Civil Revision Petition.

6. Heard the learned counsel appearing for the petitioner as well as the respondent and perused the materials available on record.

7. The Civil Revision petition is filed challenging the order dismissing I.A.No.303 of 2012 filed by the petitioner for condoning the delay of 324 days in filing the petition to set aside the exparte decree. According to the petitioner, due to the fact that he fell into the well in January, 2011 and was taking treatment in JIPMER Hospital, he could not contact his Advocate. From the materials on record, it is seen that the petitioner was set exparte on 14.12.2010 and exparte decree was passed on 03.02.2011. Even according to the petitioner, he fell into the well only in January, 2011. The petitioner has

not given any reason for not filing the written statement before he was set exparte in the month of December, 2010 itself. According to the petitioner, he took treatment for three months, underwent two operations and Doctors advised him to take bed rest for six months. The petitioner has marked the Clinical Bio-Chemist Lab request as Ex.P1, which does not support this contention of the petitioner. The petitioner has not produced any other document to substantiate his contention. However, the petitioner has admitted that he contested in the local body election during October, 2011 and he was elected as Member and subsequently, as Vice-President. The learned Judge also considered Ex.P2 – letter alleged to have been written by the Advocate. The learned Judge rejected Ex.P2 by giving valid reason.

8. It is no doubt true that application for condoning the delay must be considered liberally and parties must be given opportunity to put forth their case on merits. But the intention of the parties must be bonafide and there must be valid and acceptable reason for condoning the delay. In the present case, from the materials on record and evidence of the petitioner and documents filed by him, it is seen that the reason given by the petitioner are

not true and acceptable. For the above reason, the order of the learned Judge dated 17.07.2013 made in I.A. No.303 of 2012 in O.S. No. 239 of 2010 is not interfered with and the Civil Revision Petition is liable to be dismissed.

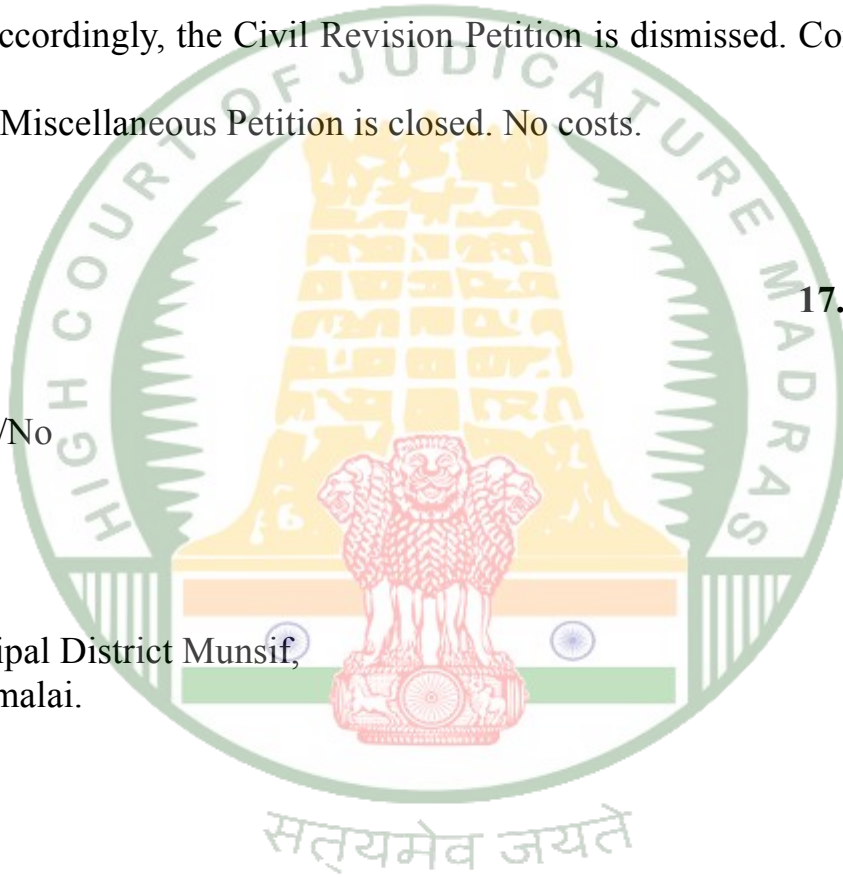
9. Accordingly, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

17.09.2020

gsa
Index: Yes/No

To

The Principal District Munsif,
Tiruvannamalai.

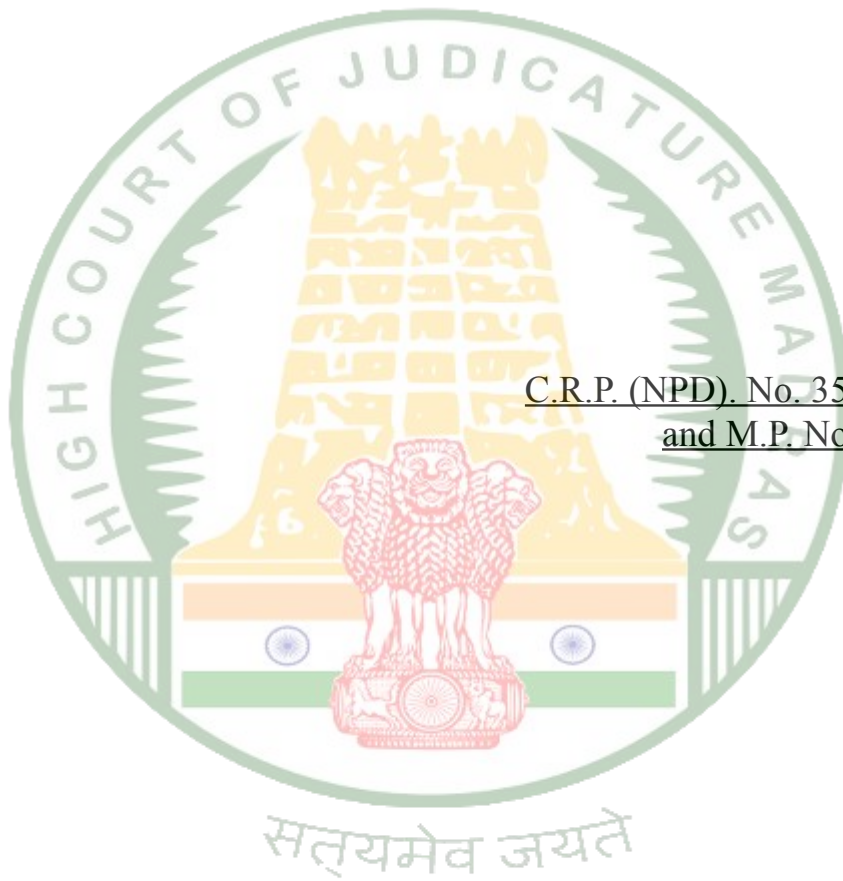


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