

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition NPD.No.2047 of 2016
and CMP.No.10663 of 2016

P.Palanivel

..Petitioner
/Appellant

Vs

1.Muthusamy
2.Periyasamy
3.Palaniappan

..Respondents
/Respondents.

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to set aside the fair and decreetal order of the Subordinate Judge's Court at Tiruchengode dated 07.10.2015 in I.A.No.18 of 2013 in Unnumbered A.S.No...of 2013.

For Petitioner : Mr.P.Valliappan

For Respondents : Mr.M.S.Palanisamy

ORDER

Heard both sides through Video Conferencing.

2. The petitioner filed suit against the respondents in O.S.No.87 of 2004 on the file of District Munsif Court, Tiruchengode, for partition. After trial, the said suit was dismissed. Against which, the petitioner filed appeal before the Subordinate Judge, Tiruchengode, and the said memorandum of appeal was returned by the Registry of the Subordinate Court, Tiruchengode. There was delay of 673 days in representing the said appeal memorandum. Therefore, the petitioner filed affidavit in support of Petition in I.A.18 of 2013 seeking to condone the delay of 673 days in representing the delay. The said petition was dismissed by the Subordinate Judge, Tiruchengode. Challenging the said order of dismissal passed by the Subordinate Judge, Tiruchengode, petitioner is before this court, by way of this Civil Revision Petition.

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3. The learned counsel for the petitioner submitted that though the petitioner filed appeal memorandum against the order passed in O.S.No.87 of 2004 before the Subordinate Judge Court, Tiruchengode, within the period of limitation, the said memorandum of appeal was returned for some defects and

three weeks time was given to rectify the defects in representing the memorandum of appeal. It is stated by the petitioner advocate that after the appeal memorandum papers returned back by the Registry of the Sub Court, Tiruchengode, he misplaced the bundle and he could not trace out inspite of his best efforts. Therefore, he could not represent the matter. The learned Subordinate Judge dismissed the petition on the ground that two years delay is not properly explained and even after knowing that appeal memorandum was returned with some defects, no steps taken immediately and only after two years, it was represented. After discussing the rulings of the Honourable Supreme Court and this Court, as pointed out by the learned counsel for the respondents in support of their contentions, the trial judge, came to the conclusion that the enormous delay of two years, if condoned will defeat the ends of justice.

4. Heard the arguments advanced by both sides counsel and perused the records carefully.

5. Admittedly, suit in O.S.No.87 of 2004 filed by the Revision Petitioner herein as Plaintiff was dismissed by the District Munsif Court, Tiruchengode, by Judgment dated 24.09.2010. Against which, the petitioner

filed Appeal Suit before the Subordinate Judge Court, Tiruchengode. The said appeal memorandum was returned to the Advocate in order to rectify certain defects found therein. The petitioner was given three weeks time for returning the papers. The said memorandum of appeal was not represented within the stipulated time. It was represented with delay of 673 days and the petitioner has stated in his affidavit that after the appeal memorandum was returned to him, the bundle was misplaced and after rectifying the defects, it is represented and therefore, there was delay of 673 days. Though the petitioner has not given any proper reasons before the lower court, in this case, admittedly, appeal memorandum in unnumbered AS was filed by the petitioner as against the Judgment in O.S.No.87 of 2004. The advocate before the lower court has not given any reason for such delay. The fact remains that the counsel stated in his affidavit that office of the counsel for the petitioner had misplaced the bundles and therefore, the delay has occurred. Further the appeal memorandum was represented with delay of 673 days. In these circumstances, taking hyper technical view for rejecting the petition to condone the delay in representing the appeal memorandum, stating no proper reason is given and not explained each and every delay, is not acceptable because for the mistake of the advocate for the petitioner, the party should not suffer. Therefore, this court is inclined to condone the delay of 673 days

in representing the appeal memorandum. Accordingly, I.A.No.18 of 2013 is allowed and unnumbered A.S., is to be taken on file. In any event, since the delay on the part of the petitioner has caused much hardship and inconvenience to the respondents, the petitioner is directed to pay a sum of Rs.20,000/- (Rupees Twenty thousand only) to the respondents on or before 24.07.2020.

6. This Civil Revision Petition is allowed on the above terms. Consequently, connected Miscellaneous Petition is closed.

7. Post the CRP, for compliance of payment of cost by the petitioner to the respondents, on 30.07.2020.

13.07.2020
सत्यमेव जयते

Index: Yes/No

Internet : Yes/No

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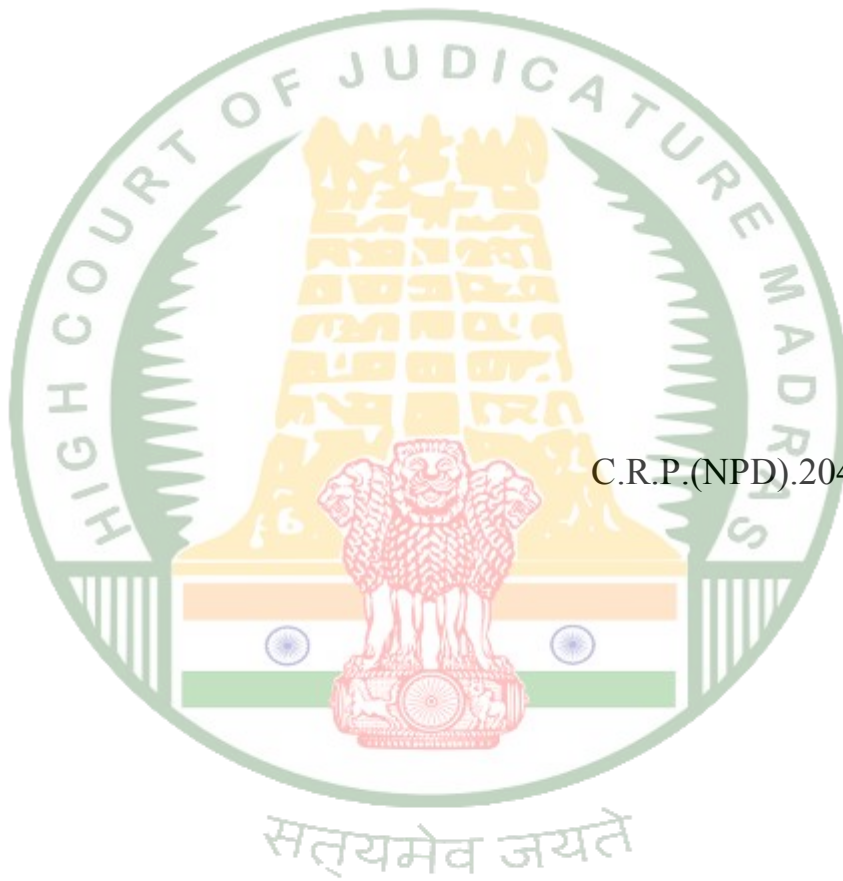
1.The Subordinate Judge, Tiruchengode.

2.The Section Officer, V.R. Section, High Court, Madras

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P.VELMURUGAN,J.

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