

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

**CRP (NPD) No.557 of 2018 &
CMP No.2981 of 2018**

Siva Natarajan Alayam
Nalvar Arivalayam,
Shivagnana Isaikuzhu & Sivagnana
Poothagananatha Isaikuzhuivanar being
represented by its Administrator
Siva K.Ramalingam
No.16, Natesan Nagar,
100 Ft. Road,
Puducherry 605 005.

... Petitioner

1. G.Natarajan
2. Sathiyamurthy

Vs.

... Respondents

Prayer: The Civil Revision petition filed under Section 115 of the Code of Civil Procedure, against the order dated 02.02.2018 passed by the learned Principal Sub Judge, Puducherry in I.A.No.72 of 2017 in un-numbered A.S.

For Petitioner : Mr.R.Thiagarajan

For Respondents : Mr.L.Prabakar

ORDER

The petitioner who is a third party obstructor has come up with this revision challenging an order refusing to condone the delay of 370 days in filing an appeal against an order directing removal of obstruction.

2. The 1st respondent obtained an order of eviction against the 2nd respondent in HRCOP No.22 of 2011. When that order of eviction was sought to be put in execution, the decree holder was resisted in obtaining delivery. Hence, he filed an application under order XXI Rule 97 of the Code of Civil Procedure, seeking removal of obstruction in E.A.No.41 of 2012 . The third party obstructor entered appearance through counsel and also resisted the application contending that the petitioner had in fact given away the property for construction of a temple in the site. This defence was disbelieved and the Rent controller ordered removal of obstruction. Aggrieved, the petitioner had filed an appeal along with the delay of 370 days in filing the appeal.

3. In the affidavit filed in support of the said application for condonation of delay, the petitioner has averred that he was affected with Jaundice and was taking native treatment. Therefore, he could not prosecute the appeal in time. The learned appellate Judge namely the Principal Sub Judge, Puducherry who heard the application concluded that the reason assigned by the petitioner cannot be believed in as much as there is enough material to show that the petitioner was prosecuting criminal cases in the Judicial Magistrate Court located in the same campus during the relevant period. On the said finding, the learned appellate Judge, concluded that the petitioner has not made out a sufficient cause for condonation of delay of 370 days. Hence the revision.

4. I have heard Mr.R.Thiagarajan, learned counsel appearing for the petitioner and Mr.L.Prabakar, learned counsel appearing for the respondents.

5. Mr.R.Thiagarajan, learned counsel appearing for the petitioner would vehemently contend that the learned appellate Judge was not right in dismissing the application for condonation of delay. According to him, the reasons being bonafide, the petitioner should have been given an opportunity to contest the appeal on merits.

6. Contending contra, Mr.L.Prabakar, learned counsel appearing for the 1st respondent would submit that after the disposal of the application by the appellate Court, the decree holder had taken possession of the property. He would submit that the appellate Court had upon a consideration of the material on record concluded that the petitioner has not made out a sufficient cause for condonation of delay of 370 days. He would point out that the petitioner has been appearing before the Judicial Magistrate, Puducherry. There is enough more material to show that the petitioner was aware of the proceedings before the trial Court and the orders passed there on.

7. I have considered the rival submissions.

8. A perusal of the order of the learned Principal Sub Judge, Puducherry, shows that the learned Subordinate Judge has considered all the relevant factors in matters of condonation of delay. The Court has specifically found that the petitioner has been appearing before the criminal Court in the very same campus and has also been signing before the Police twice a day at 10 am and 5 pm during the relevant period during which he said to have undergone native treatment for Jaundice. These facts show that the reason assigned by the petitioner for the delay is false.

9. It is the consistent view of this Court as well as the Hon'ble Supreme Court that the Courts will not aid helping hands to a person who comes with false reasons for the delay.

10. I am therefore convinced that the appellate Court was right in dismissing the application on the ground that the petitioner has given false reason for the delay. I do not see any reason to interfere with the order of the trial Court. Hence, the Civil Revision petition fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.08.2020

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Speaking order

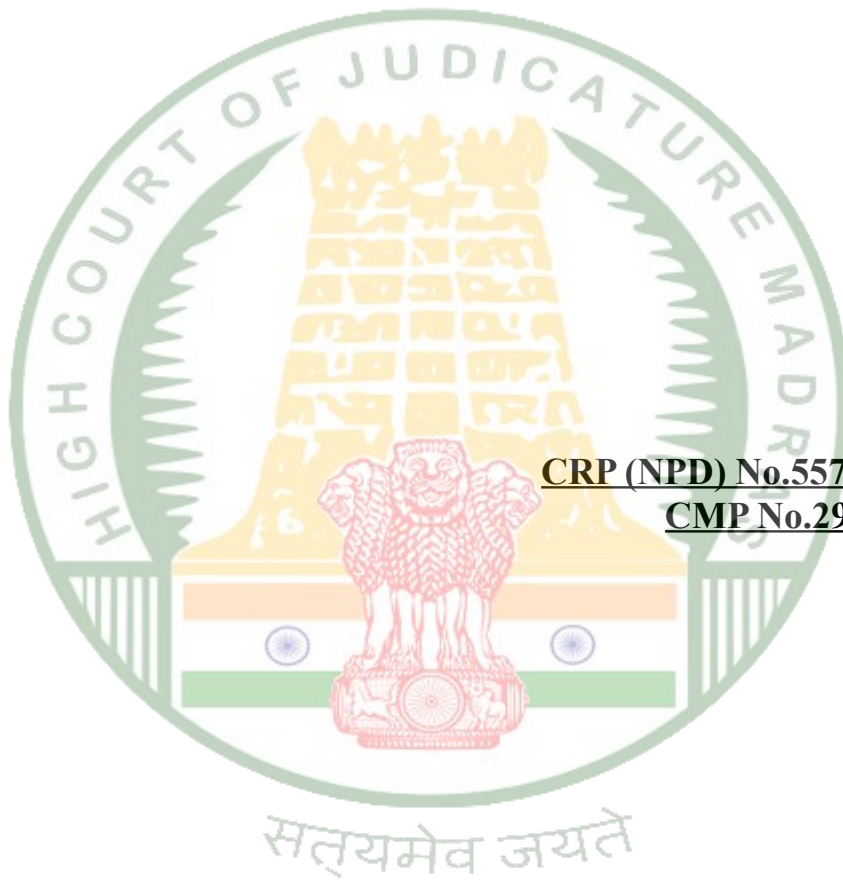
To
The Principal Sub Judge,
Puducherry.

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R.SUBRAMANIAN, J.

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