

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.734 of 2018 and
CMP No.3767 of 2018

Srinivasan

... Petitioner

Vs

Pongianna Gounder

... Respondent

Prayer: The Civil Revision petition filed under Section 115 of the Code of Civil Procedure, praying to setting aside the fair and decreetal order of the learned I Additional Subordinate Judge, Erode, dated 11.10.2017 in I.A.No.864 of 2016 in O.S.No.63 of 2012 and to order the said IA.

For Petitioner : Mr.T.M.Hariharan

For Respondent : Mrs.V.S.Kesavan

ORDER

This revision is directed against an order, which is a result of pedantic and dogmatic approach adopted by the trial Court in dismissing an application for condonation of delay of 110 days in representing an

application for condonation of delay of 1072 days in seeking to set aside the ex parte decree.

2. It is settled law that the delay in representation has to be considered much more liberally than the delay in filing. The delay here is only 110 days in representing the petition. The reason given is that the papers got mixed with the other case papers in the counsel's office. I do not see any malafide conduct on the part of the petitioner or his counsel. To this application for condonation of delay in representation, a 4 page counter affidavit has been filed setting out the merits and demerits of the entire claim in the suit. The learned trial Judge also, without appreciating the fact that the delay is only in representation, dismissed the application.

3. I am convinced that such dismissals would only result in miscarriage of justice. In view of the same, this Civil Revision petition is allowed. The application in IA No.864 of 2016 will stand allowed. The delay of 110 days in representing the petition is condoned. The trial Court is directed to number the application for condonation of delay in filing and

dispose of the same in accordance with law without being influenced by any of the observations made in this order. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking order / Non speaking order

To

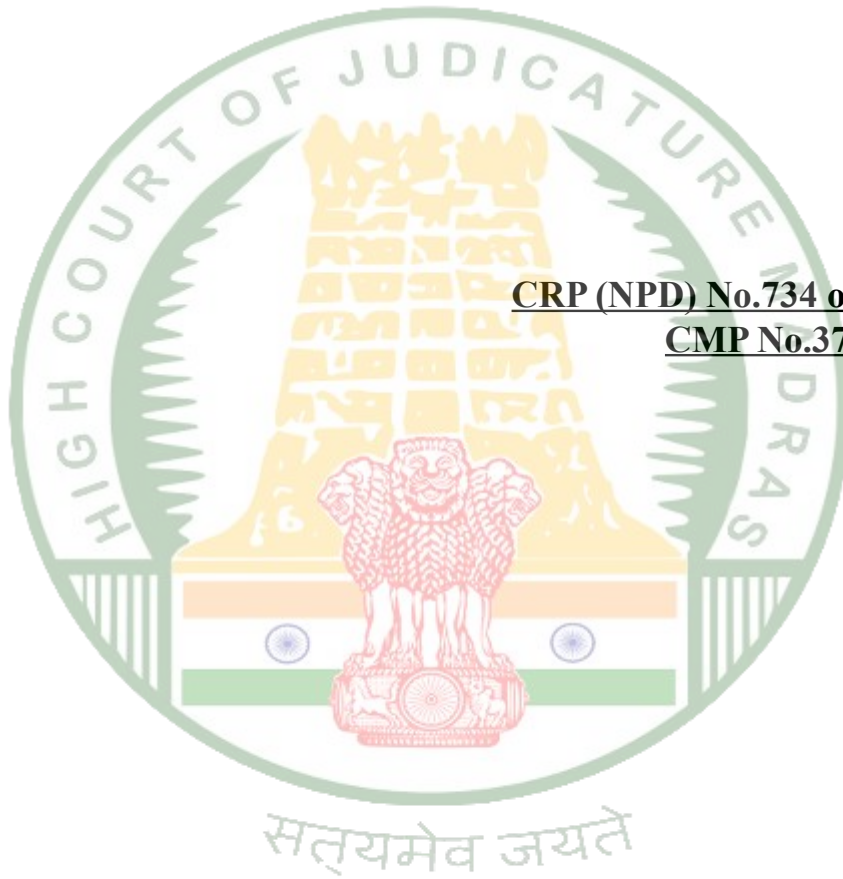
The I Additional Subordinate Judge,
Erode.



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R.SUBRAMANIAN, J.

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