

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P (NPD) No.1869 of 2019
and C.M.P.No.12300 of 2019

1.Ananthammal
2.Muniyammal

... Petitioners

Vs.

Jayaraman

... Respondent

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 2.2.2019 passed in I.A.No.114 of 2018 in A.S.No.37 of 2015 on the file of the learned First Additional District Judge, Tiruvallur.

For Petitioners : Mr.J.R.K.Bhavanantham
For Respondent : Mr.I.Rathinavel

सत्यमेव जयते

ORDER

The respondent/plaintiff filed a suit for specific performance in O.S.No.49 of 2010. The suit was decreed in favour of the respondent on 07.09.2015, against which, the petitioners preferred an appeal in A.S.No.37 of 2015. The appeal was dismissed for default. Hence, they filed an application for re-admittance of the appeal with a delay of 190 days.

2. During the pendency of the above petition, the respondent filed an execution petition and got the sale deed executed, wherein, he has incurred a sum of Rs.60,000/- for registering the sale deed. The appeal was dismissed for default on 07.12.2017. The trial Court has dismissed the application for condoning the delay of 190 days in restoring and readmitting the appeal. Against the same, the present Civil Revision Petition has been preferred.

3. I have considered the submission of both the parties.

4. The appeal preferred by the petitioners is a statutory appeal and if they are not permitted to contest the appeal on merits, their substantive rights will be taken away on technicalities.

5. The learned counsel for the petitioners would also rely on the judgment of the Hon'ble Supreme Court in the case of *the Commissioner, Mysore Urban Development Authority Vs. S.S.Sarvesh* reported in **2019 (5) SCC 144**, wherein, the Hon'ble Supreme Court has observed that the valuable right of the litigant shall not be deprived and shall not be prevented from prosecuting the appeal on merits. It was also observed that the appeal can be

readmitted on imposing compensatory costs. The relevant portion reads as under:

"16. Indeed, this case reminds us of the subtle observations of the learned Judge Vivian Bose, J., which His Lordship made in one of the leading cases of this Court in *Sangram Singh v. Election Tribunal*.

17. Vivian Bose, J., speaking for the Bench, in his distinctive style of writing made the following observations while dealing with the case arising out of Order 9 and reminded the courts of their duty while deciding the case. The observations are apt and read as under: (AIR p.429, paras 16-17)

"16..... a code of procedure must be regarded as such. It is 'procedure', something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to 'both' sides)

lest the very means designed for the furtherance of justice be used to frustrate it.

17..... our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

18. Keeping the aforementioned statement of law in consideration and applying the same to the facts of this case, we have no hesitation in allowing this appeal and set aside the impugned order.

19. In our view, the courts below should have seen that the first appeal is a valuable right of the appellant and,

therefore, the appellant authority was entitled for an opportunity to prosecute their appeal on merits. If the appellant's advocate did not appear may be for myriad reasons, the Court could have imposed some costs on them for restoration of their appeal to compensate the respondent (plaintiff) instead of depriving them of their valuable right to prosecute the appeal on merits. This is what Vivian Bose, J. has reminded to the courts while dealing with the cases of this nature in *Sangram Singh* to do substantial justice to both the parties to the *lis*. Indeed, dismissal of the appeal in default and dismissal of the appeal on merits makes a difference. The former dismissal is behind the back of the litigant and latter dismissal is after hearing the litigant. The latter is always preferred than the former."

6. Now that, the learned counsel for the petitioners submitted that he will deposit a sum of Rs.60,000/-, the costs incurred by the respondent towards registration of the sale deed before the lower appellate Court within a period of four weeks.

7. Considering the submission and also the statutory right of the appellant, the order passed by the lower appellate Court dismissing the condoning delay petition filed by the petitioners is set aside. Accordingly, the delay of 190 days in filing the appeal is condoned. The lower appellate Court is directed to pass appropriate orders, taking into consideration the judgment of the Hon'ble Supreme Court cited above with regard to imposing compensatory cost.

8. With the above direction, the Civil Revision Petition is ordered accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

01.10.2020

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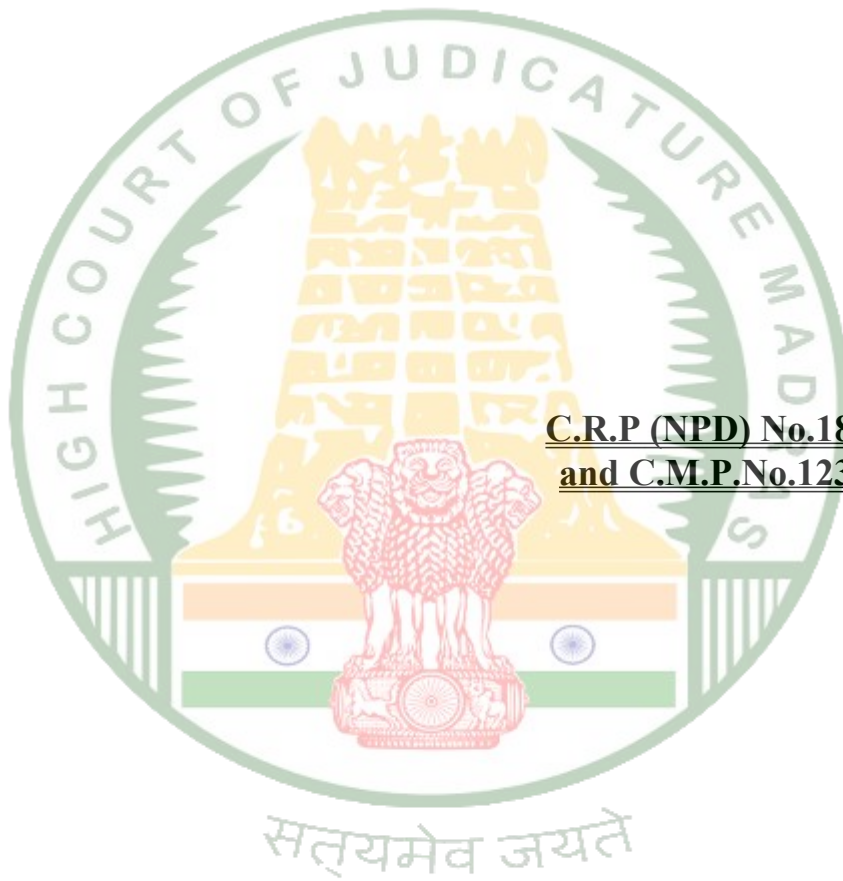
The First Additional District Judge,
Tiruvallur.

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M.GOVINDARAJ, J.

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