

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP(PD)No.248 of 2021

[Through Video Conferencing]

C.Balamurugan

... Petitioner/Appellant

vs

Pushpagandhi

... Respondent/Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure seeking to set aside the fair and final order dated 31.01.2020 in I.A.No.63 of 2018 in unnumbered A.S on the file of the learned Principal Subordinate Judge, Erode by allowing this Civil Revision Petition.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.Ashwin Kumar

ORDER

The revision petition has been filed questioning the order in I.A.No.63 of 2018 in an unnumbered Appeal Suit on the file of the Principal Sub Court at Erode.

2.I.A.No.63 of 2018 had been filed under Section 5 of the Limitation Act seeking to condone the delay of 504 days in filing the First Appeal.

3.Normally any such delay should be viewed with magnifying glasses and the reasons assigned should come under strict scrutiny of the Court.

4.There were two suits. One was for partition and the other was for permanent injunction. They were O.S.No.316 of 2008 and O.S.No.282 of 2010. Both were taken up for joint trial and a common judgment was passed.

5.The revision petitioner herein should have filed two separate appeals since he was affected by the common judgment in both the suits. Though it is stated that two appeals were presented, the Registry had returned the papers stating that he had to represent the papers and to take a decision as to which suit the said First Appeal was filed. With much prudence the First Appeal papers were taken on file with respect to the Judgment and Decree in the suit for partition.

6.This left the Judgment in the suit for injunction without any challenge. Therefore, an Appeal was filed with delay of 504 days, which delay was

sought to be condoned in I.A.No.63 of 2018. Delay was refused to be condoned.

7.Any First Appeal is only an extension of the trial procedure, re-examining the facts determined by the Trial Court and also examining whether the correct preposition of law had been applied by the trial Court.

8.It would only be appropriate that parties are permitted to pursue the First Appeal. It is their statutory right. Therefore, I would allow the revision petition and condone the delay in filing the appeal, and request the learned Sub Judge at Erode to take on record the unnumbered A.S in which I.A.No.63 of 2018 had been filed.

8. A representation has been made that the revision petitioner should be put to terms. After the Appeal Suit is numbered and if it is held that the appeal does not have any merit on conclusion of hearing, then, the learned Principal Sub Judge, Erode while taking a decision on whether costs should be imposed upon or not, may also taking into consideration that the appeal was filed with a delay of 504 days and at that time impose costs to compensate for the delay.

C.V.KARTHIKEYAN, J.

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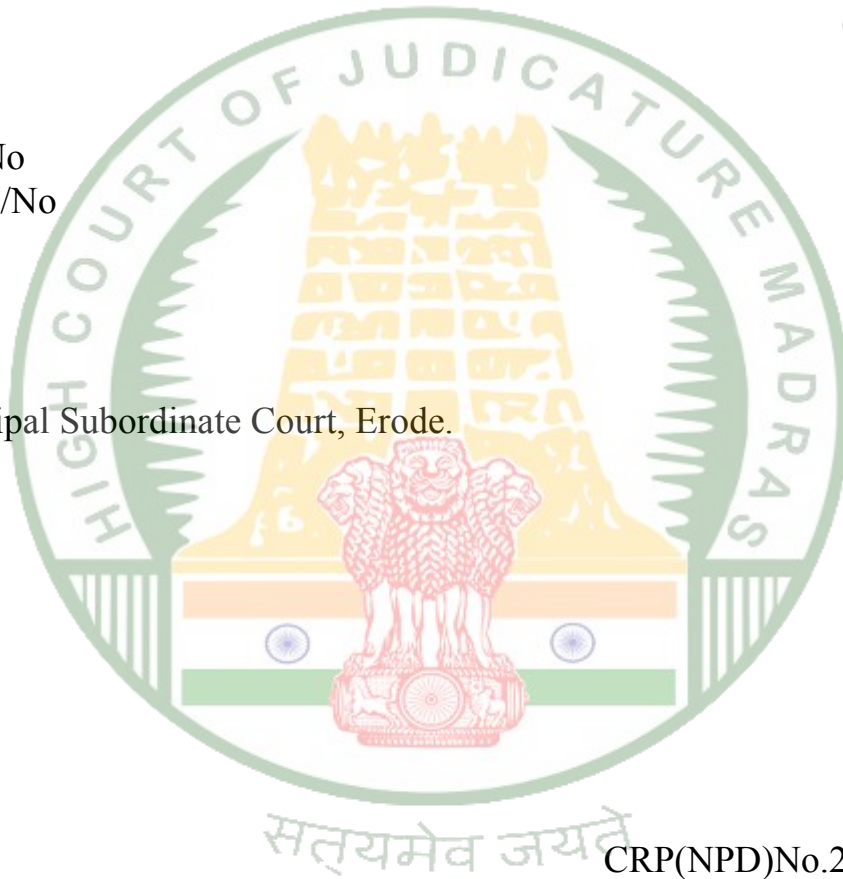
9.With the observation, the revision petition is allowed. No order as to costs.

07.07.2021

Index:Yes/No
Internet:Yes/No
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To

1.The Principal Subordinate Court, Erode.



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