

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(NPD)No.1463 of 2015
and M.P.No.1 of 2015

1.Indhirani Ammal
2.Elumalai
3.Minor Eswaramoorthy
4.Minor Bharanimoorthy

...Petitioners

(Minors respondents 3 & 4 rep. by
father & natural guardian, second
petitioner Elumalai)

Vs

1.Rajiv Gandhi
2.Rajesh
3.Minor Rajavel

... Respondents

(Minor rep. by father & natural
guardian Rajesh)

Prayer Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, prayed to set aside the order dated 30.01.2015 made in I.A.No.38 of 2014 in O.S.No.292 of 2010 on the file of the First Additional District Munsif cum Judicial Magistrate No.1, Ulundurpet.

For Petitioners : Ms.V.Suguna
For R1 : Not ready in notice
For R2 & R3 : Ms.Sasikala Ramadoss

ORDER

This Civil Revision Petition has been filed against the dismissal order dated 30.01.2015 passed by the Court below in I.A.No.38 of 2014, seeking to condone the delay of 834 days in filing the application to set aside the ex-parte order.

2.The reason assigned by the revision petitioners for the delay was that their Lawyer failed to inform them about filing the written statement and the date of hearings periodically. Due to the communication gap between their Lawyer and the revision petitioners, the delay had occurred in filing the written statement, which was neither willful nor wanton. However, the Court below elaborately dealt with the reason assigned by the revision petitioners by referring various judgments and ultimately found that the reason assigned was not cogent and proper. Therefore, the Court below refused to condone the delay.

3.The learned counsel appearing for the respondent Nos.2 and 3 fairly submitted that this Civil Revision Petition is pending for the past six years and due to the pendency of the same, there is no progress in the suit. Though she vehemently opposed to condone the delay, finally, she submitted that the delay may be condoned subject to the payment of costs and in the event of condoning the delay, she requested to direct the Court below to dispose of the suit within a stipulated time frame.

4.The learned counsel for the Revision Petitioners also submitted that the Civil Revision Petition may be allowed subject to payment of costs.

5.Though both the learned counsel unanimously submitted to allow the Civil Revision Petition on payment of costs, the delay in the present case is 834 days and the said delay had occurred due to the communication gap between the Lawyer and the revision petitioners. Further, the learned counsel for the revision petitioners contended that the Lawyer had not communicated about the hearing dates from time to time to the petitioners. Though this cannot be a

reason to be assigned for condoning the huge delay of 834 days, this Court can look into aspect as to whether an opportunity should be given to the revision petitioners to contest the suit by filing the written statement in the interest of justice.

6. This Court is of the view that the Revision Petitioners cannot accuse the Lawyer solely that the Lawyer has not communicated the date of filing the written statement. On the other hand, it is the duty of the petitioners to contact the Lawyer from time to time and know about the development of the case, unless and otherwise the revision petitioners already given any standing instructions to their Lawyer to communicate the hearing dates and on which case, the Lawyer also accepted the same. In the present case, no material has been placed before this Court in order to show any standing instructions were given to their Lawyer and his acceptance to communicate about the hearing dates and development in the case from time to time. Of course, it is the duty of the Lawyer to conduct the case in the Court. But, the Revision Petitioner supposed to have contacted the Lawyer and get information about the development in their case. Therefore, simply the petitioners cannot put blame

on the Lawyer and come before this Court, as a cause for the delay in filing the written statement.

7. Though failure of the Lawyer to inform the Revision Petitioners was cause for not filing the written statement in time, this Court is not inclined to accept that as sufficient cause was shown for condoning the huge delay. Further, both the learned counsel have unanimously made a submission that the delay may be condoned since the matter is pending for the past six years and in the interest of justice, the delay needs to be condoned. Taking note of the submission of the either side counsel and in the interest of justice, this Court is inclined to condone the delay, subject to the payment of Rs.10,000/- payable by the revision petitioners to the learned counsel for the respondent, within a period of two weeks from the date of receipt of a copy of this order.

8. The Civil Revision Petition is allowed on the above terms and the impugned order dated 30.01.2015 passed in I.A.No.38 of 2014 in O.S.No.292 of 2010 on the file of the First Additional District Munsif cum Judicial Magistrate No.1, Ulundurpet is set aside. Since the suit has been pending from the year

2010, the learned First Additional District Munsif cum Judicial Magistrate No.1, Ulundurpet, is directed to expedite the trial and dispose of the suit within a period of six months from the date of receipt of a copy of this order. The revision petitioners are directed to file their Written Statement on the first date of hearing of the suit on receipt of this order copy by the Court below, failing which, the benefit granted in this order, will automatically cease to operate. No costs. Consequently, connected miscellaneous petition is closed.

06.10.2021

Index: Yes
Internet: Yes
Speaking order/Non Speaking Order

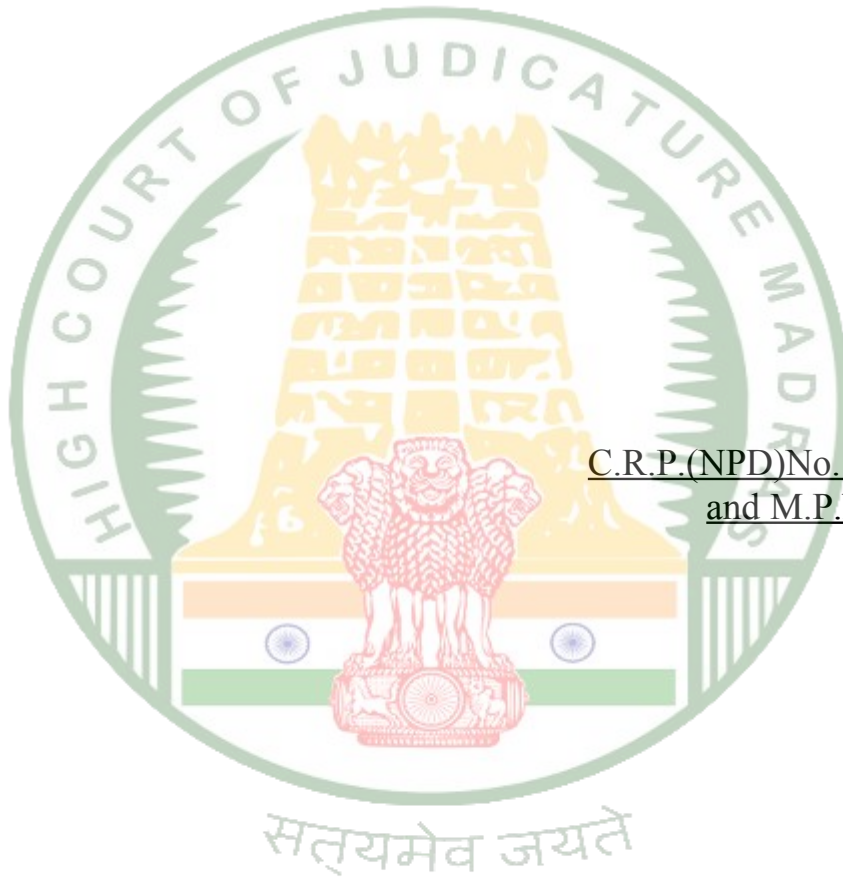
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To:
The First Additional District Munsif cum
Judicial Magistrate No.1,
Ulundurpet.

Note: Issue Order Copy on 11.10.2021

KRISHNAN RAMASAMY,J.

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