

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(NPD) No.2896 of 2015

and

M.P.No.1 of 2015

Elayappan
S/o.Palanivel

...Petitioner/Petitioner / Appellant/Petitioner

Vs.

1. S.P.Ramkumar (Died)*
S/o. S.R.Padmanaban

2. P.Geethamani
D/o. S.R.Padmanaban

3. V.Usha
D/o. S.R.Padmanaban

4. Leela Muralidharan (Died)*
D/o. S.R.Padmanaban

5. Selvam @ Alageswari
W/o.Late.P.Ganapathi

6. Subramani
S/o.Ramasamy Gounder

7. Ramasamy
S/o.Velappa Gounder

.. Respondents/Respondents/Respondents/Respondents

8. Prema
W/o.Late S.P.Ramkumar
9. R.Ramprasanth
S/o.Late S.R.Ramkumar

10.R.Aarthipriya
W/o.Rajesh

11.M.Saisri Aishwarya
D/o.Late Leela Muralidharan ...Respondents

(*R1 died. RR8 to 10 brough on record as Lrs of the deceased R1.

**R4 died. R11 brough on record as LR of the deceased R4, vide Court order dated 28.06.2021 made in CMP Nos.7208 and 7215 of 2021 in CRP No.2896 of 2015 – ADJCJ)

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India seeking to set aside the fairand decreetal order dated 12.11.2014 passed in I.A.No.97 of 2013 in I.A.No.117 of 2011 in A.S.No.25 of 2008 on the file of the Principal District Court, Namakkal.

For Petitioner : Mr.Mohamed Irfan
for Mr.T.S.Baskaran

For Respondents : Mr.Kalyanaraman

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ORDER

(This case has been heard through video conference)

The revision has been filed seeking to set aside the fair and decretal order dated 12.11.2014 passed in I.A.97 of 2013 in I.A.117 of 2011 in A.S.No.25 of 2008 on the file of the Principal District Court, Namakkal.

2. The brief facts of the case is that the revision petitioner is the 4th defendant in O.S.No.160 of 1993 filed by the respondents/ plaintiffs seeking for a mortgage decree. The trial Court by order dated 24.07.2008 decreed the suit against the petitioner/4th defendant. Against the Judgment and decree the revision petitioner had filed A.S.No.25 of 2008 before the learned Principal District Judge, Namakkal. When the case was posted, neither the petitioner/appellant nor his counsel appeared and thereby, the appeal was dismissed for default on 16.03.2011. Thereafter, the petitioner had filed I.A.No.117 of 2011 for restoring the appeal and it was posted for notice of hearing on 21.12.2011. On 21.12.2011, since the petitioner/ appellant was not present before the Court, the petition in I.A.117 of 2011 was dismissed. Again the petitioner had filed a petition in I.A.No.97 of 2013 seeking to restore I.A.117 of 2011 in A.S.No.25 of 2008 under Order 9 Rule 9 C.P.C.

with a delay of 683 days. In the petition, it had been stated that the petition in I.A.No.117 of 2011 was posted for notice of hearing on 21.12.2011 and since he was suffering from fever, he was unable to contact his counsel and intimate about the hearing of case and thereby, the petition has been dismissed.

3. The respondent had filed a counter stating that the petitioner had willfully and deliberately allowed the appeal to be dismissed for default for twice i.e. firstly on 16.03.2011 and it was restored by allowing I.A.51 of 2011 on 06.07.2011 and once again the appeal was dismissed for default on 27.07.2011. Thereafter, the petition for restoration was also allowed to be dismissed for default and subsequently, the petition to restore under Order 9 Rule 9 C.P.C. was filed with a delay of 683 days and it was also contended that the petitioner had not filed any documents to prove that he was down with fever.

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4. The trial Court taking into consideration that no sufficient cause had been shown by the petitioner, had dismissed the petition against which the present revision has been filed.

5. Mr.Mohamed Irfan representing Mr.T.S.Baskaran, the learned counsel for the petitioner would submit that the petitioner's properties were mortgaged with the respondents and that the substantial right of the petitioner is involved in the appeal. He would further submit that the petitioner was unable to appear before the Court as well as inform his counsel since he was laid with viral fever. He would submit that It is not a case where the petitioner was lethargic. Since, the petitioner's property is involved in this case, the petitioner has got a substantial right in this case. Even assuming there had been some lapses on the part of the petitioner, the petitioner had filed the petition and shown sufficient cause that only due to his illness he was unable to appear before the Court. He would submit that the Hon'ble Supreme Court in Ummer Vs. Pottengal Subida and Others, reported in (2018) 15 SCC 127 has held that the requirement of explanation of each day's delay is no longer good law and had condoned the delay by imposing cost and terms. The learned Counsel would further relied on the Judgment in Commissioner, Mysore Urban Development Authority Vs. S.S.Sarvesh reported in (2019) 5 SCC 144 and would submit that the Hon'ble Apex Court finding that the right of appeal being the valuable right of the litigant, has held that the Courts can impose compensatory costs instead of depriving litigant of valuable right of prosecuting the appeal on

merits. The learned counsel would further submit that without prejudice to his right, the petitioner is prepared to deposit the entire decretal amount before the appellate Court to show his bonafides and he has also filed an affidavit of undertaking to deposit the decretal amount of Rs.5,50,515/- in O.S.No.160 of 1993 on the file of the Principal District Judge, Namakkal, within a period of eight weeks.

6. Mr.S.Kalyanaraman, learned Counsel appearing for the respondents would vehemently oppose stating that at every stage, the petitioner had been lethargic and no sufficient cause had been shown by the petitioner to condone the huge delay of 683 days and thereby, the Appellate Court had rightly dismissed the petition. He would further submit that the respondents 8 to 11 are the legal heirs of the other respondents and they are also represented by him.

7. Heard the learned Counsels and perused the materials on record.

8. Perusal of record shows that there had been lapses on the part of the petitioner / appellant. However, it is a case where the property of the

petitioner is involved. Now the petitioner has also filed an affidavit of undertaking agreeing to deposit the entire decretal amount within a period of four weeks from the date of receipt of copy of the order.

9. In the Judgment referred supra in Ummer Vs. Pottengal Subida and Others, reported in (2018) 15 SCC 127, the Hon'ble Supreme Court has held that when reasons assigned by the appellant are genuine, the delay can be condoned and the requirement of explanation by each day's delay is no longer good law and the Court had condoned the delay by imposing cost of Rs.10000/-. In Commissioner, Mysore Urban Development Authority Vs. S.S.Sarvesh [referred above], reported in (2019) 5 SCC 144 the Hon'ble Apex Court has held that the right of appeal is a valuable right of the litigant and further held that the Courts can impose compensatory costs instead of depriving litigant of valuable right of prosecuting the appeal on merits.

10. Taking into consideration the facts and circumstances of the case, the submissions made by the learned counsels and also taking note of the affidavit of undertaking dated 05.07.2021 agreeing to deposit the entire decretal amount, this Court is inclined to allow the petition on the following terms;

a. Accordingly, the Civil Revision Petition is allowed. The order dated 12.11.2014 in I.A.97 of 2013 in I.A.117 of 2011 in A.S.No.25 of 2008 on the file of the learned Principal District Court, Namakkal is set aside and A.S.No.25 of 2008 stands restored on condition that the petitioner shall deposit the decretal amount of Rs.5,50,515/- [Rupees Five Lakhs Fifty Thousand Five Hundred and fifteen only] to the credit of O.S.No.160 of 1993 within a period of four weeks from the date of receipt of copy of the order.

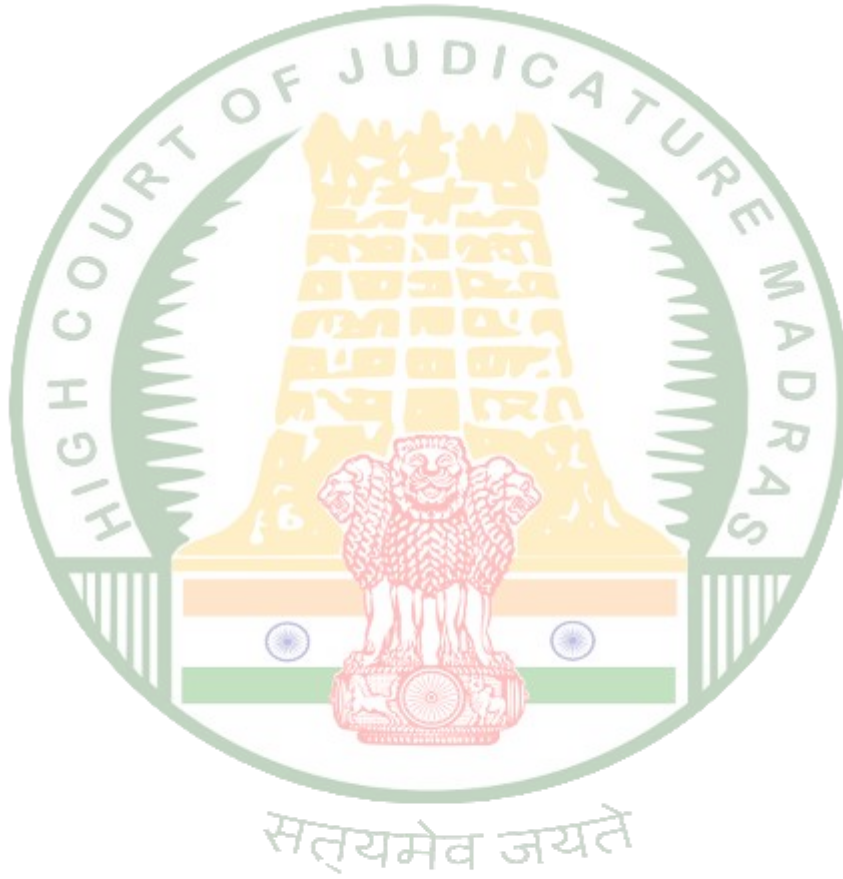
b. The petitioner shall also pay cost of Rs.20,000/- (Rupees Twenty Thousand Only) either to the counsel for the respondents or to the respondents within a period of three weeks from the date of receipt of copy of the order. If the conditions are not complied within the period stipulated above, the Civil Revision Petition shall stand automatically dismissed and I.A.97 of 2013 on the file of the Principal District Court, Namakkal, also shall stand automatically confirmed.

11. Since the appeal is of the year 2008, the learned Principal District Judge, Namakkal, is directed to accord priority and see to that the appeal in A.S.No.25 of 2008 is disposed of within a period of six months from the date of receipt of copy of this order.

12. With the above observations, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

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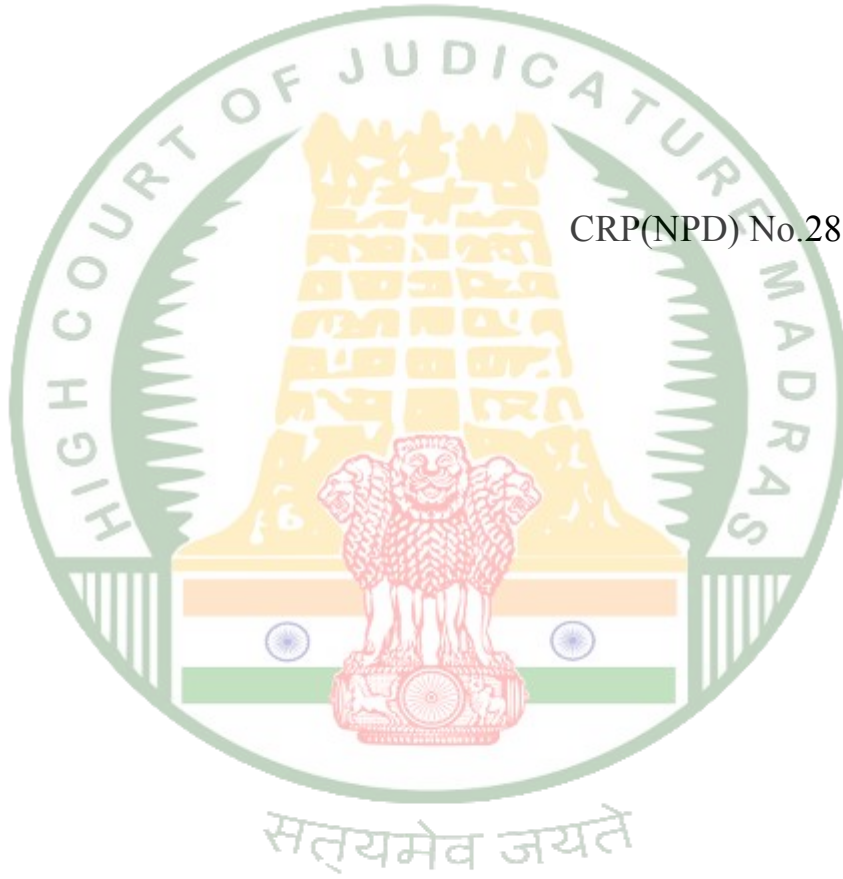


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A.D.JAGADISH CHANDIRA,J.

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To
The Principal District Judge,
Namakkal



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