

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2021

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P.(PD)No.2264 of 2018

G.Saminthan,
S/o.Govindasamy Gounder

...Petitioner

Vs

1.Sundaram,
S/o.Nachi

2.Saraswathi,
W/o.Nallamuthu

3.Rathinasami,
S/o.Nallamuthu

4.Bakiyalakshmi
W/o.Nallamuthu

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, prayed to set aside the order dated 20.03.2018 made in I.A.No.08 of 2017 in C.M.A.No.CFR No.7915 of 2016 in O.S.No.218 of 2015 on the file of the learned Sub Court, Kangayam by allowing this Civil Revision Petition.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.A.K.Kumarasamy, Senior Counsel
for Mr.S.Kaithamalai Kumaran

ORDER

This Civil Revision Petition has been filed against the order made in I.A.No.08 of 2017 in C.M.A.No.CFR No.7915 of 2016 in O.S.No.218 of 2015, dated 20.03.2018 on the file of the learned Sub Court, Kangayam

2.The gist of the case is that I.A.No.08 of 2017 was filed to condone the delay of 66 days in filing Civil Miscellaneous Appeal against the dismissal of I.A.No.1294 of 2015 filed under Order 7 Rule 11 CPC seeking to reject the plaint in O.S.No.218 of 2015. The I.A.No.08 of 2017 was filed to condone the delay stating the reason that the petitioner was suffered from Jaundice, due to which the petitioner was not able to prefer the Civil Miscellaneous Petition in time. The Court below rejected the condone delay petition stating that no proof was produced to prove the illness suffered by the petitioner. Aggrieved by the same, the present Civil Revision Petition has been filed.

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3.The learned counsel for the petitioner contended that since the petitioner suffered from Jaundice, he could not file the Civil Miscellaneous

Appeal in time. Further, the petitioner took treatment from the local country medical practitioner and therefore, he was not able to produce the documentary evidence to prove his illness. In support of his contention, the learned counsel referred the order passed by the Hon'ble Supreme Court in the case of *S.Ganesharaju vs. Narasamma* reported in **2012 (2) MWN 216 and 2013 (11) SCC 341** and submitted that there is no legal impediment to condone the delay of 66 days.

4.Per contra, Mr.A.K.Kumarasamy, learned Senior Counsel for the respondent submitted that the petitioner was failed to produce the document to substantiate his contention that he was suffered from Jaundice. The Court below has rightly dismissed the condone delay petition filed by the petitioner and no interference is required in the order passed by the Court below.

5.He further submitted that the petitioner has filed the petition for condonation of delay in filing the Civil Miscellaneous Appeal against the dismissal order passed in I.A.No.1294 of 2015. The petitioner has wrongly preferred Civil Miscellaneous Appeal against the dismissal of the application

filed for rejection of plaint. The petitioner ought to have preferred Appeal Suit against the dismissal of I.A.No.1294 of 2015. Therefore, the Civil Miscellaneous Appeal is not maintainable even after the condonation of delay.

6.In reply, the learned counsel for the petitioner submitted that the petitioner has filed the Civil Miscellaneous Appeal under Section 96 and Order 43 Rule 1 CPC, therefore, it was wrongly named as Civil Miscellaneous Appeal instead of Appeal Suit.

7.Heard N.Manokaran, learned counsel for the petitioner and Mr.A.K.Kumarasamy, learned Senior Counsel for the respondents.

8.On perusal of the material available on record, it could be seen that the delay was occurred due to the reason that the petitioner was suffered from Jaundice. It is an admitted fact that the petitioner had not produced any document to prove his illness. Further, as contented by the learned counsel for the petitioner in the village the people used to take treatment from local

country medicine practitioner for treating Jaundice. In such cases, the country medicine practitioner will hardly issue any proof for taking treatment. Therefore, this Court is of the considered view that in the interest of justice, it would be appropriate to condone the delay of 66 days in filing the Civil Miscellaneous Appeal.

9. Accordingly, the delay of 66 days in filing the Civil Miscellaneous Appeal is condoned and the order dated 20.03.2018 made in I.A.No.08 of 2017 in C.M.A.CFR.No.7915 of 2016 in O.S.No.218 of 2015 passed by the Sub Court, Kangayam is set aside granting liberty to the respondents to raise all the objections with regard to the maintainability of Civil Miscellaneous Appeal filed against the order passed by the Court below in the application filed under Order 7 Rule 11. The petitioner also equally entitled to take his plea about naming the Civil Miscellaneous Appeal wrongly instead of Appeal Suit.

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10. The Court below is directed to number the Civil Miscellaneous Appeal or otherwise within a period of two weeks from the date of receipt of

copy of this order and dispose the same within a period of three months thereafter, after hearing the objection, if any, raised by the respondent herein.

11. Accordingly, with the above directions the Civil Revision Petition is disposed of. No costs.

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Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order
rst

To
The Sub Judge, Kangayam.



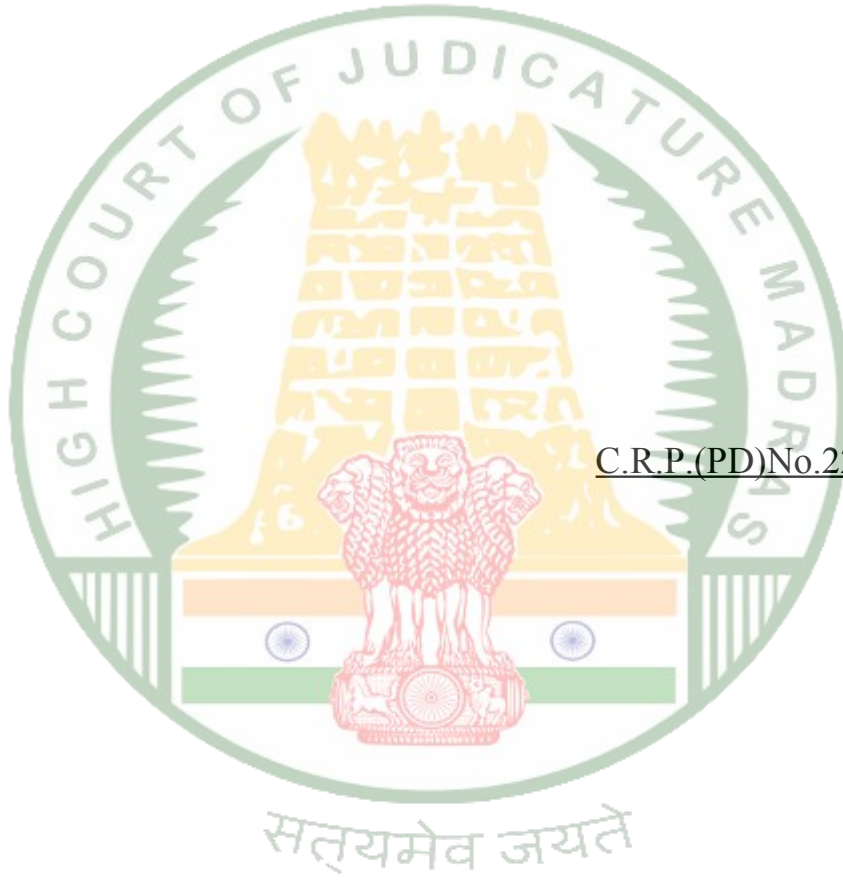
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KRISHNAN RAMASAMY,J.

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