

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.1023 of 2016
and C.M.P.No.5689 of 2016

1.M.Ganesan

2.M.Parthasarathi

... Petitioners/Defendants

Vs.

A.S.Narayanan

... Respondent/Plaintiff

Prayer: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, 1905, against the fair and final order passed in I.A.No.818 of 2015 in O.S.No.242 of 2012 by the learned District Munsif Court, Ponneri in Thiruvallur District by its Order dated 05.01.2016.

For Petitioners : M/s.S.Kingston Jerold

For Respondent : Mr.R.Krishnasamy

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed against the Order dated 05.01.2016 passed in I.A.No.818 of 2015 in O.S.No.242 of 2012 by the learned District Munsif Judge, Ponneri in Thiruvallur District.

2. The petitioners were the defendants in the suit.

3. The respondent/plaintiff has filed a suit for declaration and consequential injunction. Since the defendants omitted to appear for the hearings, an *exparte* decree was passed on 15.07.2015. The petitioners have filed a petition to set aside the *exparte* decree after a long delay of 656 days with a petition to condone the said delay. The learned trial Judge having not convinced with the reasons stated for condoning the delay, has dismissed the said petition. Aggrieved over that, the petitioners have filed the present Civil Revision Petition.

4. The learned counsel for the petitioners submitted that the learned trial Judge has chosen to dismiss the petition for the reasons that the first petitioner has not produced any document to support his contention that he was suffering from ill health for a considerable length of time. By stating so, he produced a set of medical documents and submitted that those documents would show that the first petitioner has been suffering from various health issues.

5. The learned counsel for the respondent submitted that the petitioners ought to have submitted these documents only before the trial Court. Since the petitioner has not proved the reasons for condoning the delay, the trial Court is right in dismissing the petition.

6. Apart from the merits of the rival contentions made by the respective counsels, the matter has to be seen in the interest of substantial justice. Because of the stay, the decree has not yet been executed. Since the suit has been filed for the relief of declaration, an adjudication of the rival claims on the basis of merits would serve the ends of justice in a better manner. At the same time, the callous attitude of the petitioners in not producing the relevant documents to substantiate their reasons cannot be ignored. Because of their negligence, the respondent was put under hardship and he could not either proceed with the execution of the decree also. Since the prayer of the petitioners is considered only in interest of justice, I feel that an opportunity may be given to him, if he pays a reasonable cost to the respondent.

In the result, this Civil Revision Petition is allowed and the Order dated 05.01.2016 passed in I.A.No.818 of 2015 in O.S.No.242 of 2012 by the learned District Munsif Judge, Ponneri in Thiruvallur District is set aside, subject to payment of cost of Rs.20,000/- [Rupees Twenty Thousand only] which is to be deposited in the District Munsif Court, Ponneri, Thiruvallur District within a period of two weeks from the date of receipt of a copy of this Order and on such deposit being made, the respondent is at liberty to withdraw the same by filing appropriate application. Taking into consideration the long pendency of the suit,

R.N.MANJULA,J.

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the learned trial Judge is directed to expedite the trial and dispose of the case preferably within a period of three months by posting it on a day to day basis.

Connected civil miscellaneous petition is closed.

13.07.2021

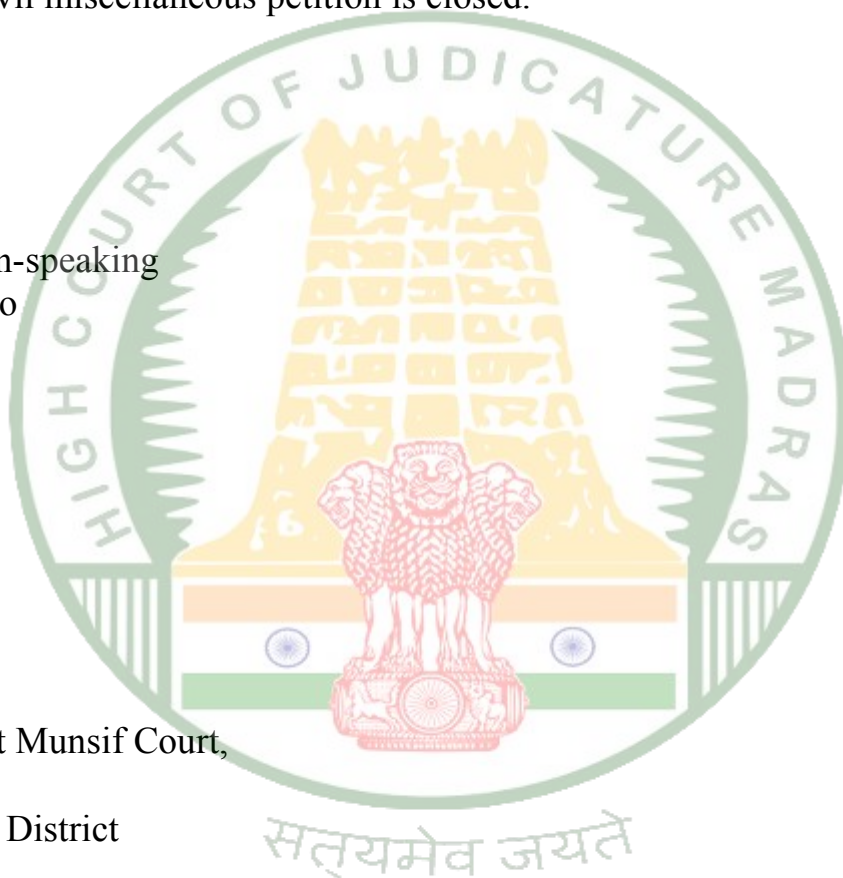
Speaking/Non-speaking
Index: Yes/No

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To

1.The District Munsif Court,
Ponneri,
Thiruvallur District

2.The Section Officer,
V.R.Section,
High Court, Madras.



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