

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD). No.1099 of 2021

and C.M.P.No.8554 of 2021

(Through Video Conference)

G.S.Suresh

...Petitioner

Versus

1. Annamalai

2. Shanthi

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside and quash the fair and decretal order dated 04.02.2021 passed by the learned Subordinate Judge, Tiruvarur and allow I.A.No.10 of 2019 in CMA/UF/2021.

For Petitioner : Mr.B.Harikrishnan

For Respondents : Mr.S.N.Palanivel

ORDER

This Civil Revision Petition has been filed challenging the order passed in I.A.No.10 of 2019 in C.M.A.UF/2021 by the learned Subordinate Judge of Thiruvvarur.

2. The respondents filed a suit in O.S.No.11 of 2018 for the relief of permanent injunction not to disturb the possession of car bearing registration No.PY 01 BR 7779 and for other reliefs. The respondents have also filed I.A.No.63 of 2018 under Order XXXIX Rule 1 of the Civil Procedure Code for temporary injunction not to disturb the respondents' possession of the aforesaid car. The said I.A. was allowed. Against the same, the petitioner preferred C.R.P.(PD) No.2862 of 2019 before this Court.

3. This Court dismissed the above Civil Revision Petition on the ground that the petitioner ought to have filed an appeal under Order XLIII of the Civil Procedure Code instead of filing the Civil Revision Petition. This Court also directed that the First Appellate Court may entertain the appeal, if a reasonable cause is given and the First Appellate Court shall not raise any technicality with regard to limitation.

4. It is further submitted by the learned counsel for the petitioner that the petitioner filed I.A.No.10 of 2019 along with C.M.A.UF/2021 for condoning the delay of 388 days in filing this C.M.A. and a conditional order was passed on 27.01.2021 directing the petitioner to pay Rs.1,000/- to the respondents for

condoning the delay. The learned counsel for the petitioner further submitted that the order passed by the Court was not communicated to the petitioner and the petitioner was also not feeling well and therefore, he could not contact his Advocate. As a result, the costs could not be paid on or before 03.02.2021 as directed by this Court. Because of the non-payment of the costs, I.A.No.10 of 2019 came to be dismissed. Against the dismissal of I.A.No.10 of 2019, the present Civil Revision Petition has been filed.

4. The learned counsel for the petitioner submitted and reiterated that costs was not paid by the petitioner because of lack of communication from the petitioner's Advocate and also the fact that the petitioner was not well. He therefore, prayed that the petitioner shall be given an opportunity to contest the order passed in I.A.No.10 of 2019.

5. In response, the learned counsel for the respondents submitted that the petitioner has not complied with the order of the learned Subordinate Judge, Thiruvarur and therefore, the petition was rightly dismissed. It is also submitted that the suit is now transferred as per the order passed in Tr.C.M.P.Nos.550 & 557 of 2019 to the District Court, Pondicherry.

6. This Court considered the rival submissions and perused the records. From the narration of sequences of events in this case, it is seen that the petitioner filed C.R.P.No.2862 of 2019 against the order passed in I.A.No.63 of 2018 and the Civil Revision Petition was dismissed on the ground that only an appeal will lie against the order passed in I.A.No.63 of 2018. At the time of dismissing the Civil Revision Petition, it was directed that the first Appellate Court shall not raise any objections on the point of limitation with regard to the period spent on prosecuting the Civil Revision Petition. If sufficient cause is shown, the First Appellate Court was directed to entertain the appeal. As per the directions of the Court, the petitioner filed I.A.No.10 of 2019 along with C.M.A.UF./2021 for condoning the delay of 388 days in filing the Civil Miscellaneous Appeal. A conditional order was passed on 27.01.2021 to pay costs of Rs.1,000/- on or before 03.02.2021 to the respondents and the reason for non-compliance of the order of this Court was that, there was no communication from the petitioner's Advocate and that the petitioner was not well. It is specifically observed in C.R.P.No.2862 of 2019 that the Appellate Court shall not raise any objection as the points of limitation with regard to the period spent on prosecuting the Civil Revision Petition. The reason stated by the petitioner for non-payment of costs appears genuine and reasonable.

7. Thus, this Court is of the considered view that the petitioner shall be given an opportunity to comply with the conditional order passed in I.A.No.63 of 2018 by filing C.M.A. Accordingly, the order of the learned Subordinate Judge of Thiruvavarur in I.A.No.10 of 2019 in CMA.UF./2021 is set aside and the **Civil Revision Petition is Allowed**. The petitioner shall pay the costs of Rs.1000/- to the respondents within a period of one month from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

8. The Court below is directed to number the CMA.UF./2021 filed against the order passed in I.A.No.63 of 2015 and dispose of the same on merits and in accordance with law.

26.10.2021

Note: Issue Order Copy on **01.11.2021**

Index: Yes/ No

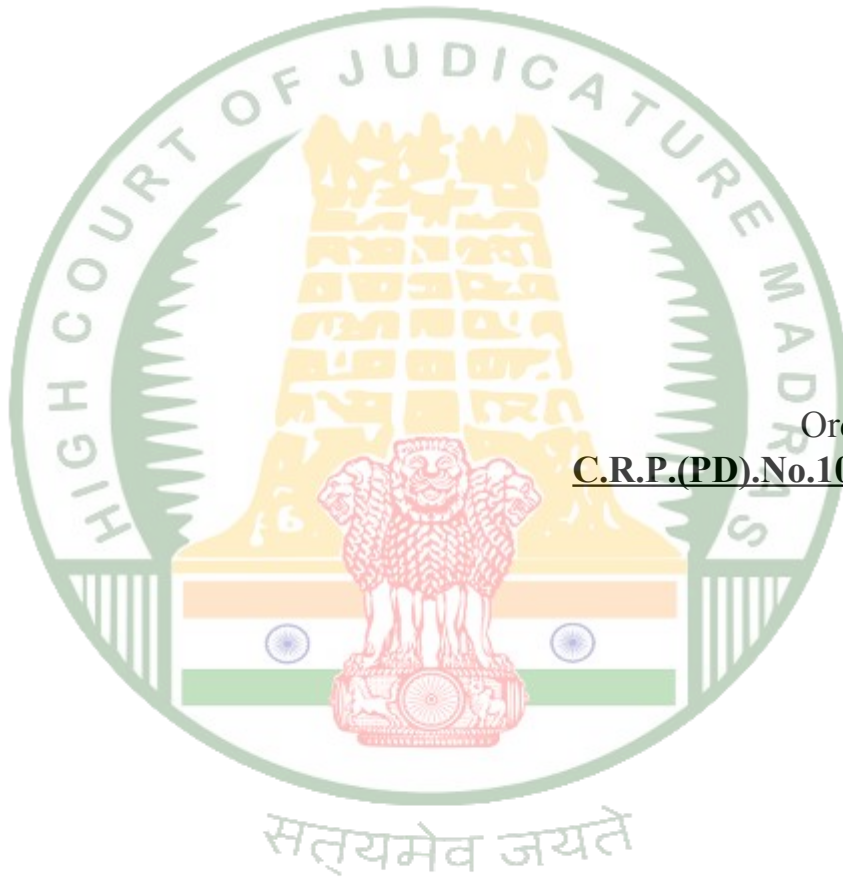
Speaking Order / Non-Speaking Order

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G.CHANDRASEKHARAN, J.,

sts

To:
The Subordinate Judge,
Tiruvarur



Order made in
C.R.P.(PD).No.1099 of 2021

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Dated:
26.10.2021