

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(NPD) No.2393 of 2018

Vinay Kumar Mittal

... Petitioner

Vs.

1.Kanchana

2.Sundarraaj

3.Soundarrajan

4.Ashok Kumar Mittal

... Respondents

Prayer :- Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order and decreetal order dated 09.03.2018 made in I.A.No.77 of 2017 in A.S.No. Nil of 2017 on the file of the Sub Judge, Arakkonam.

For Petitioner : Mr.R.Rajesh Vivekananthan

For R1 to R3 : Mr.J.Shanmuga Sundarababy

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 09.03.2018 made in I.A.No.77 of 2017 in A.S.No. Nil of 2017 on the file of the Sub Judge, Arakkonam., thereby dismissing the petition to condone the delay in filing the appeal suit.

2. The petitioner is the third plaintiff and the respondent is the defendant. The petitioner along with two others filed a suit for permanent injunction in respect of the suit property and the same was dismissed by a judgement and decree dated 20.09.2015. Thereafter, the petitioner alone filed an appeal suit with a delay of 586 days.

3. A perusal of the affidavit filed in support of the condone delay petition reveals that the petitioner was affected for Tumor Induced Osteomalacia disease for the past four years and as such, he was not able to stand and admitted in the All India Institute of Medical Sciences (A.I.I.M.S.) New Delhi. Thereafter, he was advised to take rest. Therefore, he was not able to contact the counsel. After he recovered fully, he collected the judgment and decree and preferred an appeal suit with a delay of 586 days. In support of his contention, the petitioner did not file any evidence to prove the same and also not examined any witnesses. Admittedly, there are three plaintiffs. Though, the petitioner was affected from disease and admitted in the hospital, the other plaintiffs are very much available in the station and also they are none other than the own brother

and father of the third plaintiff. Therefore, they could have very well contacted their counsel and could have taken steps to file the appeal suit. Therefore, the Court below rightly dismissed the petition to condone the delay in filing the appeal suit. Accordingly, this Court finds no illegality or infirmity in the order passed by the Court below. Hence, the Civil Revision Petition is dismissed. No costs.

09.04.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

To

The Additional Sub Court,
Vaniyambadi.

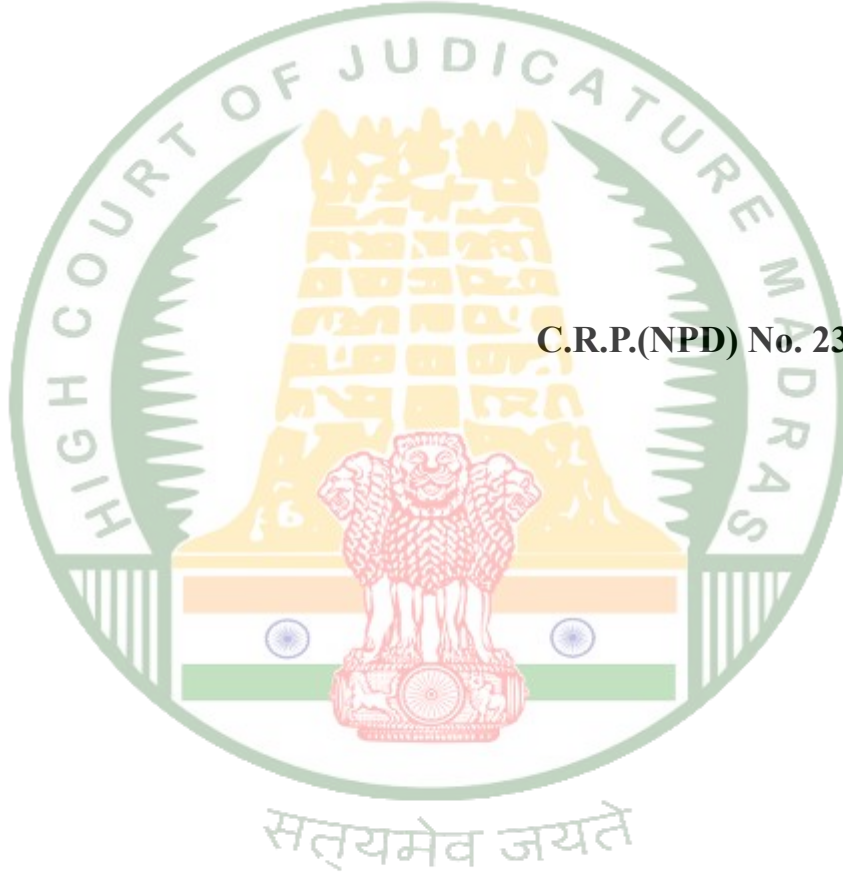
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C.R.P.(N.P.D).No. 2393 of 2018

G.K.ILANTHIRAIYAN.J,

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C.R.P.(NPD) No. 2393 of 2018

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