

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2021

CORAM

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

C.R.P.(NPD).No.595 of 2016

and

C.M.P.No.3164 of 2016

1.Kannagi

2.Bala Muruganath @ Ananth

3.Bala Baraniyan @ Eniyan ... Petitioners/Appellants/petitioners

Vs.

Mahendiran ... Respondent /Respondent /Respondent

PRAYER: The Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decreetal order of the Learned Subordinate Judge, Arni dated 11.12.2015 made in I.A.No.61 of 2015 in A.S.No.Nil of 2015.

For Petitioners : Mr.S.Silambanan, Senior Counsel

for Mr.A.Paramasivam

For Respondent : Mr.V.Manisekaran

ORDER

(Heard both sides through video conferencing)

The petitioners wherein the appellants/ defendants. This Civil Revision Petition has been filed against the order dated 11.12.2015 of the Sub Court,

Arani, passed in I.A.No.61/2015 in A.S.No. Nil of 2015.

2. The petition in which the above order was passed, has been filed to condone the delay of 1158 days in filing the appeal. The learned First Appellate Judge has observed that the reason to condone the huge delay of 1158 days was not satisfactory and dismissed the petition. The petitioner has stated that the second petitioner/second defendant has lost his father and he was surrounded with lot of family commitments and business commitments after the demise of his father. He also needed to settle the problems arose in the business and settle the dues of his father. Hence he stated that he was not in a position to concentrate on the case and that caused the delay of 1158 days.

3. Mr.K.J.Sivakumar, learned senior counsel for the petitioner submitted that there are judgements of this Court and Apex Court which would say that the Courts should be liberal while appreciating the petition to condone the delay and should not view them too technically.

4. Though it is correct that the Court should be liberal in condoning the delay, that liberty should not be used as a leverage to drag the proceedings and thereby prejudice the other side. In the matter in hand, there is an inordinate delay of 1158 days. Even if it might be true that the second petitioner had faced the

turmoil after the death of his father, it cannot be taken as a reason to cause a delay of several years. It is not the contention of the petitioners that this case has been filed against the father of the second petitioner and that he came to know about this long after the death of his father. The petitioners themselves are parties to the suit and they have contested the suit and the trial Court has decreed the suit only on merits.

5. Mr.S.Sathisaseelan, learned counsel for the respondent submitted that even during the execution proceedings the petitioners contested the execution proceedings and hence it cannot be now submitted that he was under complete inability to pursue the proceedings.

6. As pointed out earlier, had the father of the second petitioner was alone the party to the proceedings, the defendants had some reason for the delay in knowing about the case. Since the petitioners themselves are defendants, it was well within the knowledge of the petitioners that they had contested the suit and the execution proceedings. In such circumstances, it is correct for the learned First Appellate Court to record a finding that the reasons stated by the petitioners for condoning the inordinate delay of 1158 days is not satisfactory. Hence I find no factual or legal infirmity in the dismissal order passed by the learned First Appellate Judge and it does not warrant any interference.

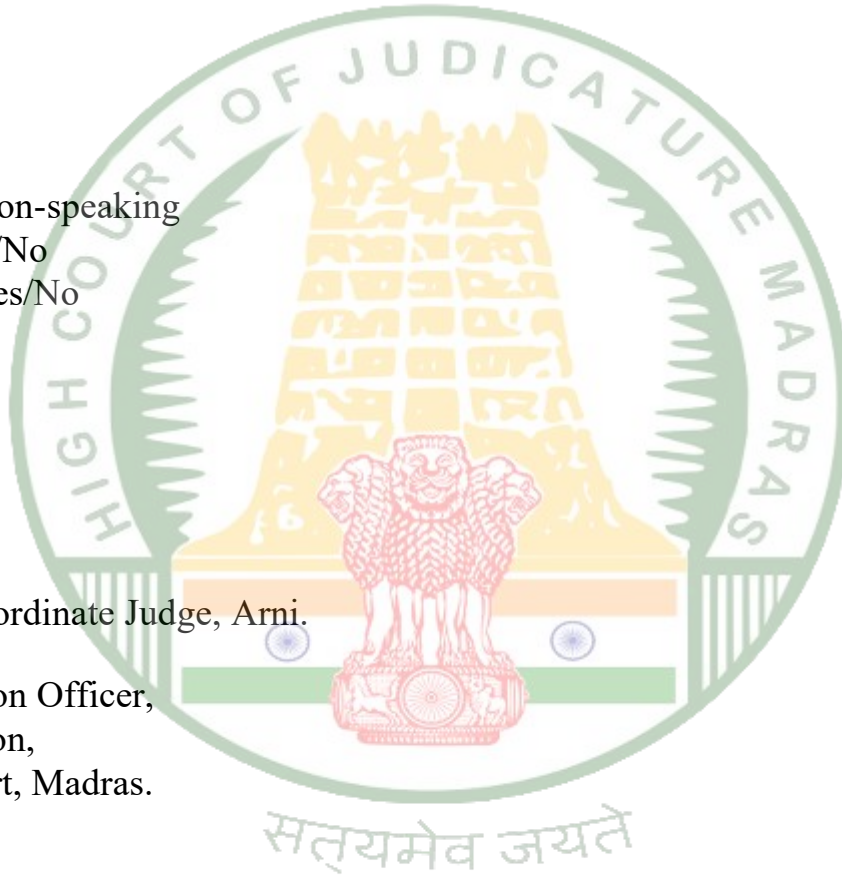
In the result, this **Civil Revision Petition stands dismissed**. No costs.
Connected civil miscellaneous petition in C.M.P.No.3164 of 2016 is also closed.

14.06.2021

Speaking/Non-speaking
Index : Yes/No
Internet : Yes/No
jrs

To

1. The Subordinate Judge, Arni.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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R.N.MANJULA,J.

jrs



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