

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM

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

**C.R.P. (NPD) No. 703 of 2018
and CMP No. 3679 of 2018**

Dr.Mohana Balusamy

...

Petitioner

Vs

1. N.Gomathi

2. A.Natarajan

...

Respondent

Prayer :- Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 20.12.2017 made in I.A.No.217 of 2017 in A.S.CFR No.4651 of 2017 on the file of the learned Principal District Court, Erode.

For Petitioner : Mr.N.Manokaran

For Respondents : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 20.12.2017 made in I.A.No.217 of 2017 in A.S.CFR No.4651 of 2017 on the file of the learned Principal District Court, Erode, thereby allowing the petition to condone the delay in filing the Appeal Suit.

2. The petitioner is the defendant and the first respondent is the plaintiff. The first respondent filed a suit for declaration in respect of the suit property. They filed an application in POP No.19 of 2005 and the same was allowed. Aggrieved by the same, the petitioner herein filed a Civil Revision Petition before this Court in CRP No.3677 of 2009 and the same was allowed. Even then, the respondents failed to pay the Court fee and as such, the petitioner was constrained to file a petition to reject the plaint under Order 7 Rule 11 of CPC in I.A.No.607 of 2010 and the same was allowed. Aggrieved by the same, the first respondent preferred an appeal suit with a delay of 181 days delay in filing the appeal suit. While allowing the condone delay petition, the Appellate Court stated that the petition is lis pendens during the pendency of M.P.No.1 of 2015 in CRP No.3677 of 2009. It is further stated that it seems that the Civil Revision Petition is also dismissed. If the Civil Revision Petition dismissed the suit barred alive. Therefore, the wrong reason, the First Appellate Court allowed the application to condone the delay.

3. However the respondents may be given one more opportunity to pursue their case in the appeal suit. Therefore, this Court finds no

infirmity or illegality in the order passed by the Court below. However, the First Appellate Court is directed to dispose of the appeal on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

4. With the above direction, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

28.07.2021

Lpp
Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To
The Principal District Judge,
Erode.

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C.R.P.(N.P.D).No.703 of 2018

G.K.ILANTHIRAIYAN.J,

Lpp



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