



C.R.P.(NPD)No.1277 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1277 of 2017
and C.M.P.No.5971 of 2017

P.Mohan Chander

.. Petitioner

Vs.

1.Amirtham
2.Saraswathy

3.M/s.Vijay Machine Tools
Represented by its Partner C.Kumar
48, Kondasamy Naidu street
Peelamedupudur, Coimbatore.

4.M/s.Engineering Works
Represented by its Partner V.Rajendran
48-A, Kondasamy Naidu street
Peelamedupudur, Coimbatore.

5.P.Santhamani

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India, against the fair and decretal order dated 04.07.2016

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made in I.A.No.181 of 2012 in C.M.A.CFR.No.29707 of 2012 on the file
of the Principal District Court, Coimbatore.

For Petitioner : Mr.M.Sriram
For R1 : Mr.K.Venkatasubban
for M/s.Sarvabhauman Associates
For R2 and R4 : Dispensed with vide Court
Order dated 28.10.2021
For R3 and R5 : No appearance

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

Civil Revision Petition is filed against the fair and decretal order dated 04.07.2016 made in I.A.No.181 of 2012 in C.M.A.CFR.No.29707 of 2012 on the file of the Principal District Court, Coimbatore.

2.Though notice has been served on the respondents 3 and 5 and their names are printed in the cause list, there is no representation for them either in person or through counsel.



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3. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

4. The petitioner is the son of one Palanisamy, the plaintiff in O.S.No.784 of 1997 on the file of the Sub Court, Coimbatore, filed against his mother Ranganayaki Ammal as 1st defendant and the respondents 1 to 4 as defendants 2 to 5 for declaration, possession and injunction. The 1st respondent filed written statement and was contesting the suit. The suit was dismissed for default on 12.07.2010. The said Palanisamy/plaintiff in the suit filed I.A.No.290 of 2010 under Order IX Rule 9 and Section 151 of C.P.C. to restore the suit, which was dismissed for default on 12.07.2010.

5. According to the said Palanisamy/plaintiff, on that day, he was present in the Court in the morning and filed petition for adjournment on the ground that he intends to change the counsel. The case was passed



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over. According to Palanisamy/plaintiff, he was aged 75 years, he had giddiness, went to home and was not present in the afternoon. The 1st respondent filed counter affidavit and opposed the said application. The learned Judge dismissed the said I.A. to restore the suit by order dated 04.03.2011. The said Palanisamy/plaintiff filed C.R.P. before this Court challenging the order of dismissal dated 04.03.2011 made in I.A.No.290 of 2010 in O.S.No.784 of 1997. The Registry of this Court returned the papers stating that appeal lies against the order of dismissal dated 04.03.2011 in I.A.No.290 of 2010 and returned the C.R.P. papers to the said plaintiff.

6.The plaintiff Palanisamy filed C.M.A.CFR.No.29707 of 2012 before the Principal District Court, Coimbatore, along with present I.A.No.181 of 2012 to condone the delay of 55 days in filing the C.M.A. Pending said application, the said Palanisamy/plaintiff died. The petitioner and 5th respondent were brought on record as legal representatives of the said Palanisamy/plaintiff as per the order dated



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30.09.2013 in I.A.No.28 of 2013. The 1st respondent filed counter affidavit and opposed the said I.A.No.181 of 2012 only on the ground that on earlier two occasions, the suit was dismissed for default and the said Palanisamy had no intention to contest the suit. The learned Judge considering the affidavit filed by the petitioner held that number of days, which sought to be condoned is only 55 days and the same is meagre one, but dismissed I.A. considering the merits of the appeal.

7.Against the said order dated I.A.No.181 of 2012 in C.M.A.CFR.No.29707 of 2012, the petitioner has come out with the present Civil Revision Petition.

8.From the materials on record, it is seen that the learned Judge after holding that the delay in filing C.M.A. is meagre one, erroneously dismissed the application considering the merits of the appeal. The learned Judge instead of deciding the application for condoning the delay in filing the appeal, has decided the appeal and dismissed the application.



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The learned Judge has committed an error and irregularity, while passing the order. Therefore, the impugned order of the learned Judge dated 04.07.2016 made in I.A.No.181 of 2012 in C.M.A.CFR.No.29707 of 2012 is liable to be set aside and is hereby set aside. I.A.No.181 of 2012 in C.M.A.CFR.No.29707 of 2012 is allowed. The learned Judge is directed to number the appeal, if it is otherwise in order and decide the same in accordance with law, without being influenced by the impugned order passed by the learned Judge in I.A.No.181 of 2012 in C.M.A.CFR.No.29707 of 2012.

9. With the above directions, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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V.M.VELUMANI,J.

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To

The Principal District Judge
Coimbatore.

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and C.M.P.No.5971 of 2017

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