

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1934 of 2017

Sithanandan @ Anandan

.. Petitioner

Vs.

1.Anandaraj @ Raja

2.Sabapathy Chettiar

3.Balasubramanian

4.Kalidasin

5.Muthukumaravelu

6.Sivasakthivelu

7.Raju

8.Vinoth

.. Respondents

WEB COPY

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C.,
against the fair and decretal order dated 04.02.2017 made in I.A.No.2592

of 2015 in un-numbered A.S.No.Nil of 2015 against O.S.No.136 of 2006
on the file of the Principal District Court, Pondicherry.

For Petitioners : Mr.V.S.Sivasundaram

For R2 : Mr.A.Kripakaran
for Mr.V.S.Senthilkumar

ORDER

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

Civil Revision Petition is filed against the fair and decretal order
dated 04.02.2017 made in I.A.No.2592 of 2015 in un-numbered
A.S.No.Nil of 2015 against O.S.No.136 of 2006 on the file of the
Principal District Court, Pondicherry.

2.The petitioner and 1st respondent are the plaintiffs and the
respondents 2 to 8 are the defendants in O.S.No.136 of 2006. The
petitioner and the 1st respondent filed the said suit against the
respondents 2 to 8 for declaration, delivery of possession and to set aside

the sale deed dated 08.09.1962 executed by the legal heirs of one Subramania Chettiar in favour of one Devakiammal, mother of the defendants. The respondents 2 to 8 filed written statement and are contesting the suit. After full-fledged trial, the suit was decreed by the judgment and decree dated 06.09.2014. The petitioner filed an appeal along with I.A.No.2592 of 2015 to condone the delay of 372 days in filing the appeal against the judgment and decree dated 06.09.2014 made in O.S.No.136 of 2006.

2(i).According to the petitioner, the copy of the judgment and decree was delivered to him on 14.10.2014. After receiving the judgment and decree, he handed over the same along with entire case bundle to the Advocate at Madras for filing the appeal. The appeal was filed before this Court. The said appeal was returned by the Registry to file the appeal before the appropriate forum. After returning the appeal, the Advocate at Madras sent entire case bundle to the petitioner. Due to severe back pain, the petitioner was unable to move and walk freely and the Doctor advised

him to take bed rest and not to go outside. Hence, the petitioner could not contact the Advocate at Pondicherry for filing the appeal.

2(ii).The 2nd respondent filed counter affidavit and opposed the said application. The 2nd respondent has stated that there is no details about the date of return of appeal before this Court and date of receipt of the returned papers by the petitioner's counsel at Madras. The petitioner has not stated specifically on what date, he received the bundle from the Advocate at Madras. The petitioner in paragraph-5 of the affidavit has stated that due to head pain, he could not move and walk freely, whereas in paragraph-8, the petitioner has stated that he was suffering from severe back pain and due to the same, he could not contact his Advocate at Pondicherry and file the appeal. The Registry of this Court returned the appeal papers on 08.06.2015. The petitioner filed appeal along with I.A. only on 05.11.2015 with a delay of nearly five months. The reasons given by the petitioner are false and frivolous. The petitioner has not explained the reasons properly and prayed for dismissal of the I.A.

3.The learned Judge considering the pleadings and medical certificate produced by the petitioner, dismissed the appeal holding that the reason given by the petitioner is not supported by any valid documents and delay of 372 days has not been properly explained.

4.Against the said fair and decretal order dated 04.02.2017 made in I.A.No.2592 of 2015 in un-numbered A.S.No.Nil of 2015 against O.S.No.136 of 2006, the petitioner has come out with the present Civil Revision Petition.

5.The learned counsel appearing for the petitioner reiterated the averments made in the affidavit filed in support of the I.A. filed to condone the delay of 372 days in filing the appeal before the Principal District Court, Pondicherry and contended that the petitioner filed appeal before this Court on 08.01.2015 and the same was returned by the Registry of this Court on 13.01.2015. The petitioner re-presented after compliance on 20.04.2015 and again, this Court returned the appeal

papers on 08.06.2015 to be filed before the appropriate forum. Due to severe back pain, the petitioner was unable to move and walk freely and could not file appeal in time. The petitioner has explained the reason by producing medical certificate. The learned Judge without properly considering the materials, erroneously dismissed I.A. and prayed for allowing the Civil Revision Petition.

6.The learned counsel appearing for the 2nd respondent contended that the respondents 2 to 8 filed E.P. and the same was allowed. The possession of the property was handed over to the respondents 2 to 8. This is the second round of litigation. The petitioner has not given sufficient reason to condone the delay of 372 days. The learned Judge considered the entire materials and rightly dismissed the application. There is no error in the order of the learned Judge and prayed for dismissal of the Civil Revision Petition.

7.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 2nd respondent and perused the materials available on record.

8.According to the petitioner, after receiving the copy of the judgment and decree made in O.S.No.136 of 2006 on 14.10.2014, entire case bundle was sent to the Advocate at Madras and the Advocate at Madras filed the appeal on 08.01.2015. The Registry of this Court returned the appeal papers on 13.01.2015 and the same was re-presented on 20.04.2015 after due compliance. This Court again returned the appeal papers on 08.06.2015 to be presented before the appropriate Court. After taking the returned papers, the petitioner was suffering from severe back pain and could not move and walk freely. Hence, he filed appeal only on 05.11.2015.

9.From the materials on record, it is seen that the petitioner has not produced any document to show that when the appeal was filed and when

it was returned. According to the petitioner, the Registry of this Court returned the appeal papers on 08.06.2015 to be presented before the appropriate forum. The appeal was filed before the Principal District Court, Pondicherry, only on 05.11.2015. According to the petitioner, the delay has occurred only due to his illness and produced medical certificate to that effect. The learned Judge has considered the medical certificate and found that the petitioner was advised to take bed rest from 10.06.2015 to 05.07.2015. But the appeal was filed only on 05.11.2015. The petitioner has not explained as to why the appeal was not filed in the month of July, 2015 itself. The learned Judge considered all the materials placed before him, the judgments relied on by the counsel for the petitioner and dismissed the I.A. holding that the petitioner has neither explained the delay with proper reason nor filed supporting document. The learned Judge has given valid reason and exercised his power properly. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

10.In the result, the Civil Revision Petition stands dismissed. No costs.

13.08.2021

kj

To

The Principal District Judge
Pondicherry.

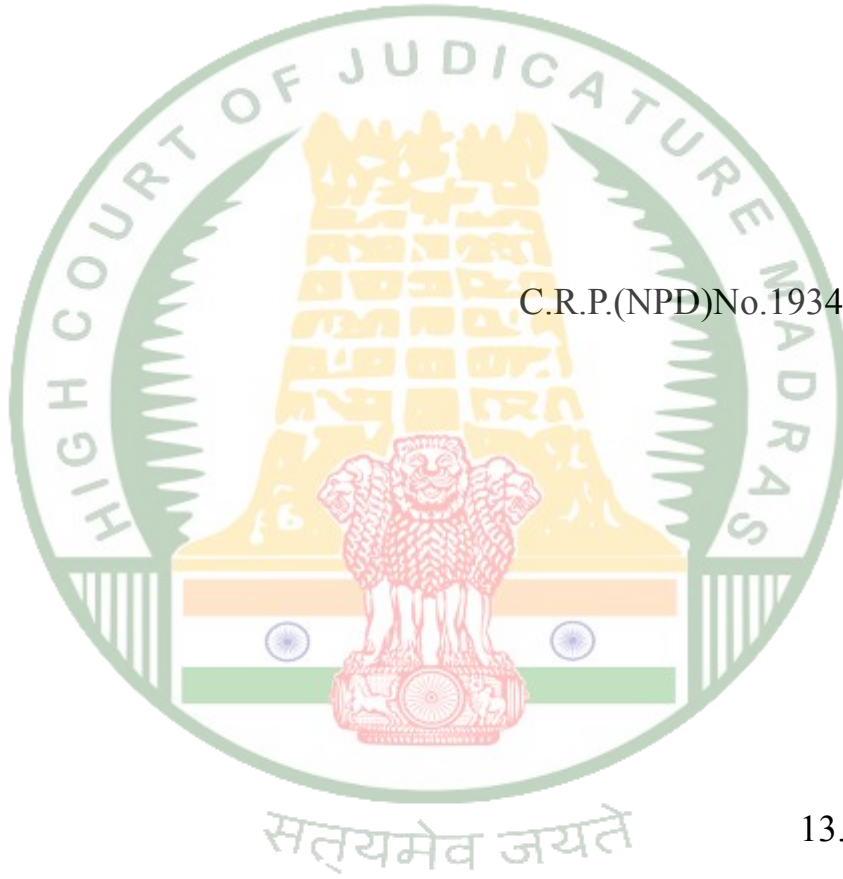


WEB COPY

C.R.P.(NPD)No.1934 of 2017

V.M.VELUMANI, J.

kj



C.R.P.(NPD)No.1934 of 2017

13.08.2021

WEB COPY