

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2806 of 2017

1.K.R.Mani

2.M.Vinoth

3.P.M.Pradeep

... Petitioners

Vs.

1.Puspathal

2.E.Sugirthavathi

3.E.Udhayakumar

4.E.Mohanasundaram

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 13.04.2017 made in I.A.No.130 of 2015 in O.S.No.294 of 2009 on the file of the Sub Court, Perundurai.

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For Petitioner

: Mr.A.Sundaravadhanam

for Mr.C.E.Pratap

For R1 : Mr.R.Prabakar

For R2 to R4 : Mr.M.Karthik
for Mr.I.C.Vasudevan

ORDER

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

Civil Revision Petition is filed against the fair and decretal order dated 13.04.2017 made in I.A.No.130 of 2015 in O.S.No.294 of 2009 on the file of the Sub Court, Perundurai.

2.The petitioners are the plaintiffs and the respondents are the defendants in O.S.No.294 of 2009 on the file of the Sub Court, Perundurai. The petitioners filed the said suit for declaration and permanent injunction. The respondents filed written statement and are contesting the suit. The suit was dismissed for default on 06.04.2011. The petitioners filed petition to restore the suit on 28.04.2011. The same was returned by the learned Judge on 09.08.2011 granting two weeks time to comply with the said return. The petitioners represented the I.A. only on 22.12.2014 along with I.A.No.130 of 2015 to condone the delay of 939

days in representing the earlier petition filed to restore the suit.

3. According to the petitioners, the 1st petitioner was suffering from jaundice and was bed ridden from 15.03.2011 to 25.04.2011. The suit was dismissed for default on 06.04.2011. The 1st petitioner was taking native treatment for jaundice, hence, he could not inform the counsel and subsequently, he filed petition to restore the suit in time on 28.04.2011. After verifying the records, the petitioners came to know that the said I.A. was returned by the Court, the same got mingled with other bundles and could not represent in time and thus the delay of 939 days has occurred in representing the petition. Unless the delay is condoned, the petitioners will be put to irreparable loss and hardship and prayed for allowing I.A.

4. The respondents filed counter affidavit denying that 1st petitioner was bed ridden and stated that during that time, the 1st petitioner was working in Southern Railway and retired from service. Subsequently, he was working during the said period and prayed for dismissal of the said

I.A.

5.Before the learned Judge, 1st petitioner was examined as P.W.1 and one Sugirthavathi, the 2nd respondent herein was examined as R.W.1 and Mr.Venkatachalam, the Superintendent of Southern Railway was examined as R.W.2.

6.The learned Judge considering the pleadings, evidence of R.W.2 and the documents produced by R.W.2, held that on the alleged date of illness and bed ridden, 1st petitioner was working in Southern Railway, rejected the reason given by the petitioners for delay and dismissed the I.A.

7.Against the said fair and decretal order dated 13.04.2017 made in I.A.No.130 of 2015 in O.S.No.294 of 2009 on the file of the Sub Court, Perundurai, the petitioners have come out with the present Civil Revision Petition.

8.The learned counsel appearing for the petitioners contended that the application for delay must be considered liberally by the Court. The delay has occurred in the office of the counsel for the petitioners and due to the mistake of Advocate, the petitioners should not be penalised. The learned Judge failed to consider the reason given by the petitioners properly. The Court returned the I.A. on 09.08.2011 endorsing three returns granting two weeks time. The petition filed by the petitioners is only to condone the delay in representing I.A. filed under Order IX Rule 9 and Section 151 of C.P.C. The learned Judge in any event, ought to have allowed I.A. with cost, within the time limit for speedy disposal of the suit and prayed for allowing the Civil Revision Petition.

9.The learned counsel appearing for the respondents contended that the petitioners have sworn to a false affidavit that the 1st petitioner was suffering from jaundice and was bed ridden from 15.03.2011 to 25.04.2011. On the other hand, during that time, the 1st petitioner was

working in Southern Railway. R.W.2, Superintendent of Southern Railway, who was examined on behalf of the respondents, deposed and produced the documents to show that 1st petitioner was working during that period. When a false affidavit is filed before the Court, the same must be viewed seriously and even criminal case can be initiated against the person, who has made false statement before the Court. The petitioners have not given any particulars as to when the petition was returned and when they came to know that the said petition got mingled with other papers. The petitioners are blaming their Advocate, but it is the duty of the petitioners to verify their Advocate about the stage of the case and prayed for dismissal of the Civil Revision Petition.

10. Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents and perused the entire materials on record.

11. From the materials available on record, it is seen that the suit filed by the petitioners was posted for trial on 06.04.2011, none of the

petitioners appeared on that day and hence, the suit was dismissed for default on 06.04.2011. The petitioners filed petition to restore the suit. According to the petitioners, the 1st petitioner was suffering from jaundice, he was taking native treatment and bed ridden from 15.03.2011 to 28.04.2011 and then he filed petition to restore the suit. The Court returned the petition on 09.08.2011 granting two weeks time to represent the I.A. According to the petitioners, after verifying the records, they came to know that the said petition got mingled with other bundles and represented with the delay of 939 days in representing the petition. The petitioners have not given any particulars as to when the petition was traced from the other bundles and whether the same was represented immediately. Further, the petitioners have not stated that the returned papers mingled with other bundles in the Advocate office. The affidavit filed by the petitioners to condone the delay is bereft of particulars. The learned Judge considering the evidence of R.W.2 and Exs.W1 and W2, dismissed I.A. on the ground that reason given by the petitioners is not acceptable. Considering the affidavit filed by the petitioners in its entirety,

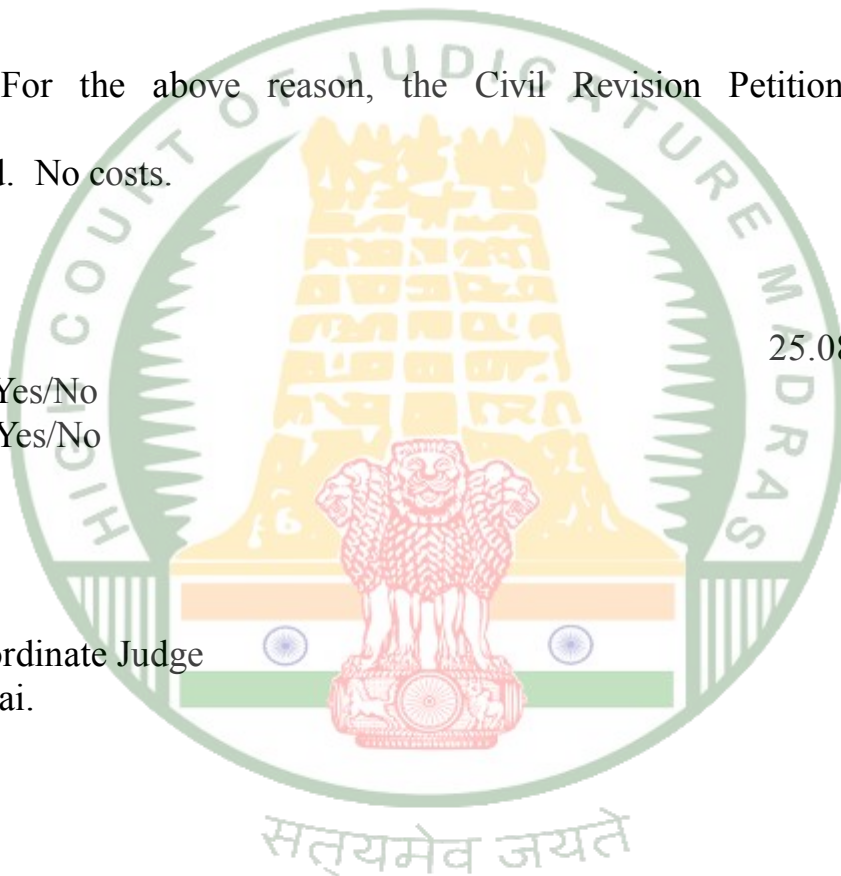
the petitioners have not given valid and acceptable reason to condone the delay of 939 days in representing the I.A. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

12.For the above reason, the Civil Revision Petition stands dismissed. No costs.

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Index : Yes/No
Internet: Yes/No
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To
The Subordinate Judge
Perundurai.

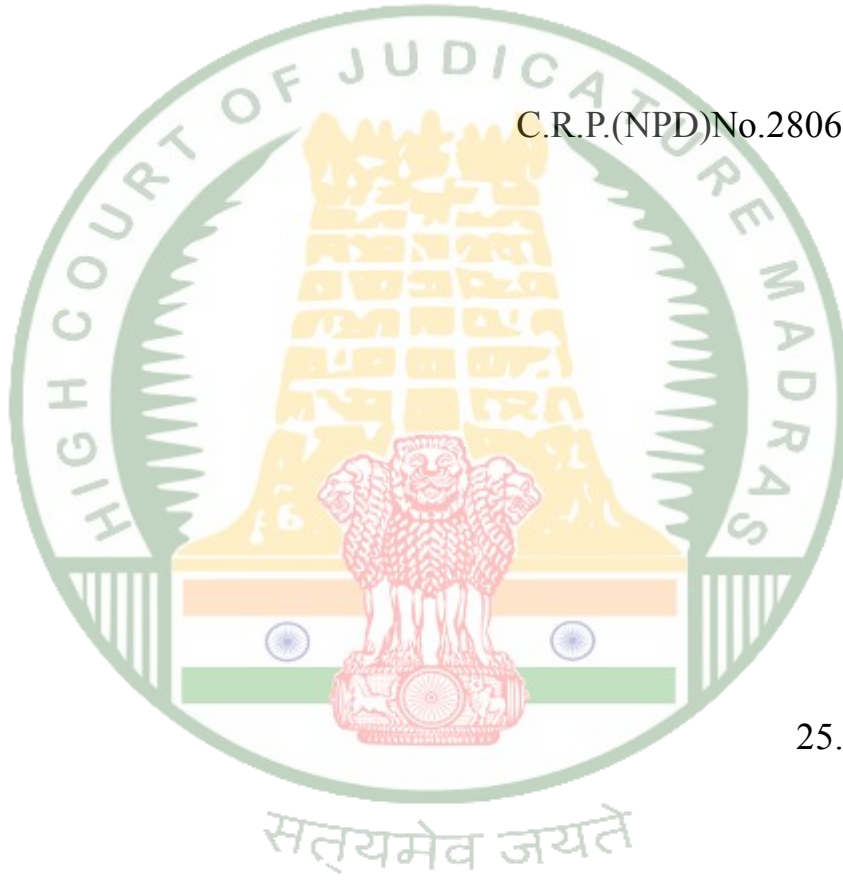


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V.M.VELUMANI,J.

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