

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

CORAM

The Hon'ble Mr.Justice Krishnan Ramasamy

C.R.P (NPD)No.4197 of 2017

M.Rajendiran

..Revision Petitioner/petitioner/plaintiff

vs.

C.Kannan

..Respondent/respondent/defendant

PRAYER:

Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 31.08.2016 made in I.A.No.231 of 2016 in un-numbered O.S.No.-- of 2016 on the file of the Principal District Munsif Court, Sankarapuram.

सत्यमेव जयते

For Revision Petitioner - M/S.R.Kumaravel

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For Respondent - No appearance, Notice Served

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Principal District Munsif, Sankarapuram, in I.A.No.231 of 2016 in an un-numbered suit, whereby, the application filed by the revision petitioner to condone the delay of 207 days in payment of the deficit Court fee of Rs.4763/- was dismissed.

2. The plaintiff in the suit is the revision petitioner herein. The revision petitioner/plaintiff filed the suit against the respondent/defendant, for recovery of money. The plaint was returned due to deficit Court fee. Thereafter, the revision petitioner filed an application in I.A.No.231 of 2016 to condone the delay of 207 days in paying the deficit Court fee. The Court below dismissed the said application. Hence, this Civil Revision Petition.

3. The learned counsel appearing for the revision petitioner submits that the revision petitioner was not able to pay the deficit Court fee within the stipulated time as directed by the Court below due to his illness and thereafter, he filed an application under Section 151 CPC to condone the

delay in payment of the deficit Court fee, but the Court below refused to entertain the application on the ground that, in the absence of the revision petitioner filing application seeking extension of time to make the deficit Court fee, the application filed under Section 151 CPC was not maintainable.

3.1 However, the learned counsel fairly admitted that the revision petitioner has not filed any separate application seeking extension of time for paying the deficit Court fee, but said failure on the part of the revision petitioner cannot be put against him. Hence, the learned counsel prayed for allowing the present Revision Petition.

4. Heard the learned counsel appearing for the revision petitioner. Though notice was served on the respondent and his name is printed in the cause list, none appeared on his behalf.

5. A perusal of the order of the Court below shows that initially, the Court below has granted a month's time to the revision petitioner for

payment of deficit Court fee. However, the revision petitioner, due to illness, was not able to pay the deficit Court fee within the stipulated time as directed by the Court below. Therefore, the revision petitioner ought to have filed an application under Section 149 CPC, which the revision petitioner admittedly failed to do so. Whereas, the revision petitioner filed application under Section 151 CPC to condone the delay of 207 days in paying of the Court fee.

5.1 It is no doubt true that the revision petitioner has not filed application under Section 149 CPC for extension of time, in such case, the Court below could have decided the matter on merit. On the other hand, the Court below simply dismissed the application for condonation of delay by citing the reason that the revision petitioner has not filed any application for extension of time.

5.2 The Court below must see that the application for extension of time for payment of Court fee has to be filed, if the revision petitioner anticipates that he cannot pay the Court fee within the time limit stipulated

by the Court. In such case, such an application has to be filed before the expiry of time granted by the Court. Any application, which is filed subsequent to the expiry of time granted by the Court below for payment of Court fee can be filed only by way of application for condonation of delay. Certainly, the revision petitioner cannot take out any application for extension, if the revision petitioner failed to file the said application before the expiry of time limit stipulated by the Court below.

5.3 Unfortunately, the Court below due to non application of mind, dismissed the application for condonation of delay simply citing the reason that the revision petitioner has not filed application seeking extension of time within the time limit. In my book, the application filed for condonation of delay and the procedure adopted by the revision petitioner is correct and does everything by the book. Thus, this Court is inclined to set aside the order dated 31.08.2016 passed by the Court below.

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6. In the result, this Civil Revision Petition is allowed, and the revision petitioner is hereby directed to pay the deficit Court fee within a period of 30 days from the date of receipt of copy of this order. No costs.

15.09.2021

Index: Yes/No
Speaking/Non-speaking Order
jd/sd

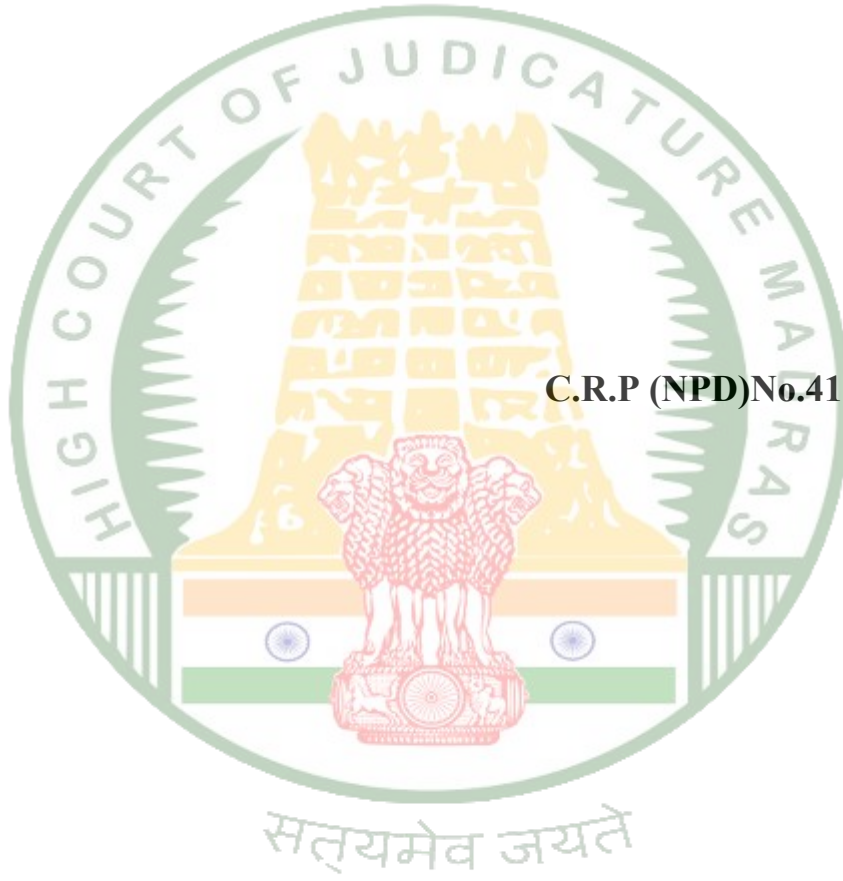
To

The Principal District Munsif,
Sankarapuram.



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Krishnan Ramasamy, J.,
jd/sd



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