

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.4075 of 2018

Sevi Gounder

... Petitioner

Vs.

1. Chennappa Nayudu
2. Muniraj

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition by setting aside the fair and decretal order dated 29.06.2018 passed in I.A.No.262 of 2017 in O.S.No.23 of 2011 on the file of the District Munsif Court-cum Judicial Magistrate, Pennagaram.

For Petitioner : Mr.M.Santhanaraman

For Respondents : M/s.G.Sumitra

ORDER

This Civil Revision Petition is directed against the fair and decretal order passed in I.A.No.262 of 2017 in O.S.No.23 of 2011 dated 29.06.2018 on the file of the learned on the file of the District Munsif-cum-Judicial Magistrate, Pennagaram.

2. Already, this Court in C.R.P (NPD) No.4073 of 2018 passed an order dated 04.12.2020 setting aside the order passed by the Trial Court. This Civil Revision Petition is also connected with the very same issue raised in C.R.P (NPD) No.4073 of 2018. Useful reference to the order dated 04.12.2020 can be extracted hereunder:-

“2. The petitioner had filed the suit in O.S.No.23 of 2011 seeking declaration and injunction. The said suit came to be dismissed for default on 03.08.2016. Claiming that he was unwell and due to his old age he could not attend Court and his ill health prevented him from seeking restoration in time, the petitioner who is about 74 years old, sought for condonation of delay of 278 days.

3. It is also pointed out that the second respondent herein had filed another suit in O.S.No.31 of 2011 against the petitioner seeking declaration of his title. Both the suits were to be tried jointly. The petitioner was set exparte in the said suit on the same day viz.03.08.2016. Mr.Santhanaraman, learned counsel appearing for the petitioner would submit that the said exparte decree has been set aside by the Court. If the exparte decree in the other suit has been set aside, the same reasons could form the basis for condoning the delay of 278 days in seeking restoration of the present suit. The Trial Court had adopted a very strict approach and dismissed the application. I am unable to sustain reasonings of the Trial

Court.

4. The Hon'ble Supreme Court and this Court have repeatedly pointing out that the Court must be liberal in matters of delay unless prejudice to the opposite party or lack of due diligence and bonafides on the part of the petitioner is established. I do not see any prejudice being caused in the other side, since the suit filed by one of them is also pending. There is neither negligence nor malafides on the part of the petitioner. Therefore the order of the Trial Court is set aside the delay of 278 days in seeking to restore the suit will stand condoned. The Civil Revision Petition is allowed. The learned Trial Judge is directed to number the application to restore the suit and dispose of it in accordance with law. No costs."

3. Following the order dated 04.12.2020, this Civil Revision Petition is also allowed and the order passed in I.A.No.262 of 2017 in O.S.No.23 of 2011 dated 29.06.2018 is hereby set aside. No costs.

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Speaking/Non-speaking order

Index : Yes/No

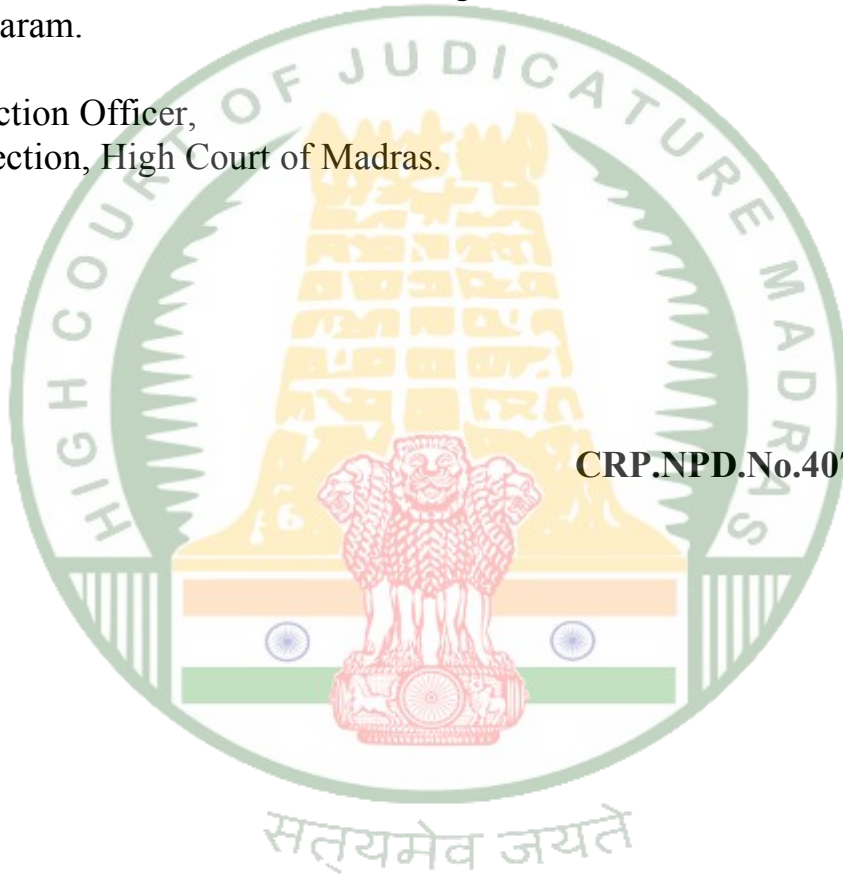
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G.K.ILANTHIRAIYAN,J.

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To

1. The District Munsif-cum-Judicial Magistrate,
Pennagaram.
2. The Section Officer,
V.R.Section, High Court of Madras.



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