

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD)No.4153 of 2018 &
C.M.P.No.22904 of 2018

Thangaraju

....

Petitioner

Vs.

Ramalingam

....

Respondent

PRAYER: Civil Revision Case filed under Article 227 of Constitution of India, against the Fair and Decretal order of Subordinate Judge's Court at Ariyalur, dated 03.10.2018 in I.A.No.80 of 2013 in A.S.No.40 of 2009.

For Petitioner : Mr.P.Valliappan

For Respondent : Mr.Usharaman

ORDER

This Civil Revision Case arises out of the order passed by the Sub Court, Ariyalur in I.A.No.80 of 2013 in A.S.No.42 of 2009.

2. The brief facts of the case are that a suit in O.S.No.295 of 2007 was initiated by the respondents for declaration, permanent injunction and for mandatory injunction. The suit was decreed, vide Judgment and Decree dated 26.06.2009. Aggrieved over the same, the petitioner/defendant preferred an Appeal before the Sub Court, Ariyalur and the same was numbered as A.S.No.40 of 2009. The Appeal came to be dismissed for non prosecution on 19.01.2012. I.A.No.80 of 2013 was filed to condone the delay of 520 days in restoring the Appeal. The learned Sub Judge, Ariyalur, dismissed the petition. Challenging the same, the present Revision has been filed.

3. Mr.P.Valliappan, learned counsel for the petitioner would submit that the Appeal was dismissed for non prosecution due to the act of his counsel and considering the prayer sought for in the suit, the petitioner can be given one more opportunity to pursue the appeal and he is ready to pay reasonable cost for the inconvenience caused to the respondent.

4. *Per contra* Mr.Usharaman, learned counsel for the respondent would argue that the Appeal was filed in the year 2009 with an intention to prolong the litigation. He further added that the petitioner herein filed an Interlocutory Application No.81 of 2010 for appointment of Advocate

Commissioner in the Appeal, but he allowed the petition to be dismissed for default. Though the appellate Court has posted the appeal between 25.01.2010 and 19.01.2012 for final hearing, the counsel for the appellant was not ready and hence, there is no illegality in the order impugned in this Revision.

5. Heard the rival submissions and perused the materials available on record.

6. In the instant case, it is an admitted fact that O.S.No.295 of 2007 was filed by the respondent for declaration of title, mandatory injunction and for consequential permanent injunction, and the suit was decreed by the trial Court. Assailing the same, the petitioner preferred an Appeal before the Sub Court, Ariyalur. It is equally not disputed that even 2010 itself, the appeal was ready for hearing, however, at the instance of the learned counsel appearing for the petitioner/appellant, the appeal was being adjourned and eventually it was dismissed for non prosecution. The condone delay petition was also rejected taking note of the conduct of the counsel, who represented the petitioner before the appellate Court.

7. Considering the relief sought for in the suit and the submission of the learned counsel for the petitioner, this Court is of the considered opinion that the petitioner is to be provided one more opportunity to pursue the Appeal, however on payment of cost of a sum of Rs.20,000/- (Rupees Twenty Thousand only). The amount shall be paid to the learned counsel for the respondent, within a period of three weeks, i.e., on or before 24.08.2021. It is represented by the learned counsel for the petitioner that an application has already been filed to restore the Appeal.

8. For the forgoing reasons, the order impugned in this revision is set aside. The Sub Court, Ariyalur, is hereby directed to restore the Appeal and dispose of the same, on merits and in accordance with law, within a period of eight weeks therefrom. Accordingly, this Civil Revision Case is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

9. List the matter for reporting compliance on 25.08.2021.

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03.08.2021

Index : Yes.

Internet : Yes.

Speaking order / Non Speaking Order

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To

The Sub Court,
Ariyalur.

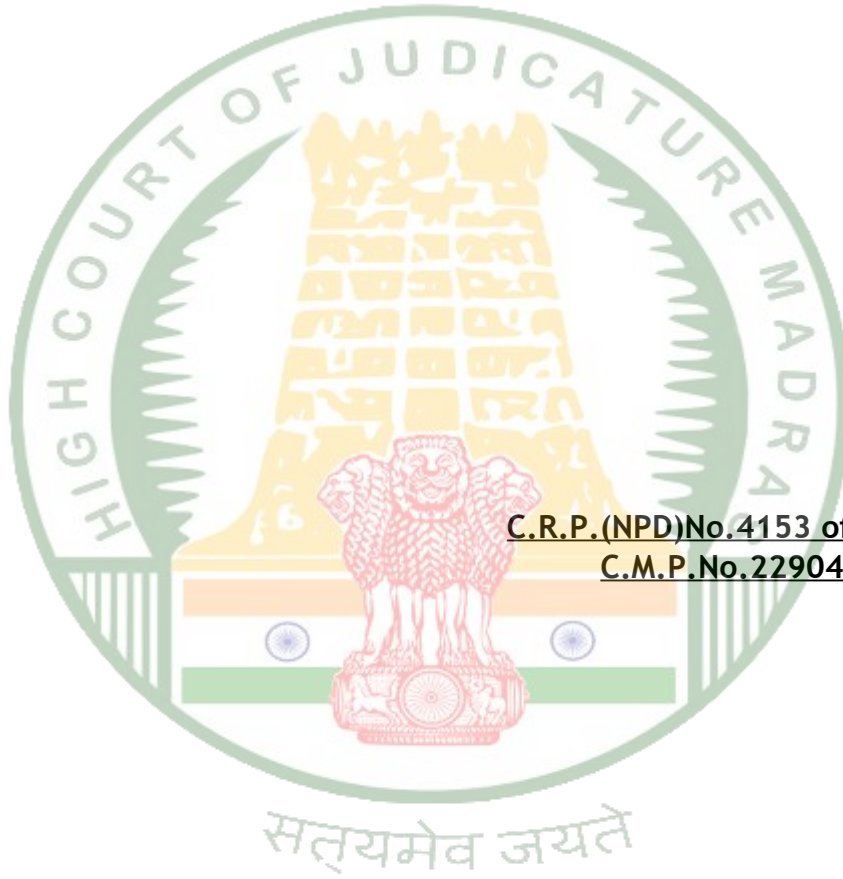


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K.KALYANASUNDARAM, J.

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