

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 23.12.2014

CORAM

The Hon'ble Mr. Justice K.KALYANASUNDARAM

Civil Revision Petition NPD No.4982 of 2014
and
M.P.No.1 of 2014

1.A.Chandran Chettiyar
2.C.Prabhakaran

.. Petitioners /Plaintiffs

vs

1.C.Mannar Mannan
2.C.Elangovan

.. Respondents/Defendants

The Civil Revision Petition filed under Article 227 of the Constitution of India against the fair order and decretal order dated 05.12.2014 passed in I.A.No.12132 of 2014 in O.S.No.1223 of 2013 on the file of the learned XVIII Assistant Judge, City Civil Court, Chennai.

For Petitioner ... Mr.S.Gowrishankar

O R D E R

This revision petition is directed against the order passed by the learned XVIII Assistant Judge, City Civil Court, Chennai in I.A.No.12132 of 2014 in O.S.No.1223 of 2013.

2.The petitioners had instituted a suit in O.S.No.1223 of 2013 against the respondent seeking for declaration declaring that the cancellation of settlement deed dated 15.3.2014 is null and void and for consequential permanent injunction.

3.The respondents received summons in the suit and also entered appearance through their advocate. Subsequently, due to the non-filing of the written statement, they were set ex-parte and ex-parte decree was passed against them on 20.12.2013. Hence, the respondents filed an application in I.A.No.12132 of 2014 to condone the delay of 198 days in filing an application to set aside the ex-parte decree contending that their advocate filed vakalat. But, subsequently, they were not informed about the Court proceedings and therefore, they got change of vakalat from the counsel and engaged a new counsel and thereafter only, they came to knowledge about the ex-parte decree.

4.It is further stated that the second petitioner was suffering from jaundice during the month of December 2013 upto last week of January 2014 and he was also suffering from heart ailment. It was further averred that both the respondents were suffering from bone knee and joint problem. The said interlocutory application was resisted by the petitioners herein by filing detailed counter. Despite serious objection, the learned judge, allowed the application. Aggrieved by the order, the present revision petition is filed.

5.Mr.S.Gowrishankar, learned counsel for the petitioners has submitted that the respondents have taken a different stand in the affidavit wherein they have stated that they were unaware of the ex-parte decree and subsequently, they have stated that they were suffering from illness. The learned counsel further submitted that the respondents have not explained the delay and therefore, the delay application has to be dismissed.

6.It is seen from the records that the suit was filed for declaration declaring that the cancellation of settlement deed is null and void and also for consequential permanent injunction. The respondents have explained the delay in the affidavit filed in support of condonation delay application. The learned trial judge, having satisfied with the reasons given by the respondents, condoned the delay only to afford opportunity to the respondents to defend their case.

7.It is settled law that the discretionary jurisdiction exercised by the trial Court in favour of the respondents should not be normally interfered with by the superior Court unless the reason is perverse and arbitrary.

8.In my considered opinion, the respondents have explained the delay. Hence, I do not find any merit in this revision petition. In fine, the civil revision petition is dismissed. No costs. Consequently, M.P.No.1 of 2014 is closed.

9.While concluding the order, both the learned counsel have requested for disposal of the main suit in a time frame. Considering the submission made by the learned counsel on either side, the learned XVIII Assistant Judge, City Civil Court, Chennai is directed to dispose of the suit in O.S.No.1223 of 2013 preferably within a period of nine months from the date of receipt of a copy of this order.

Sd/-

Deputy Registrar

Dated:21.1.15

True Copy

Sub Assistant Registrar

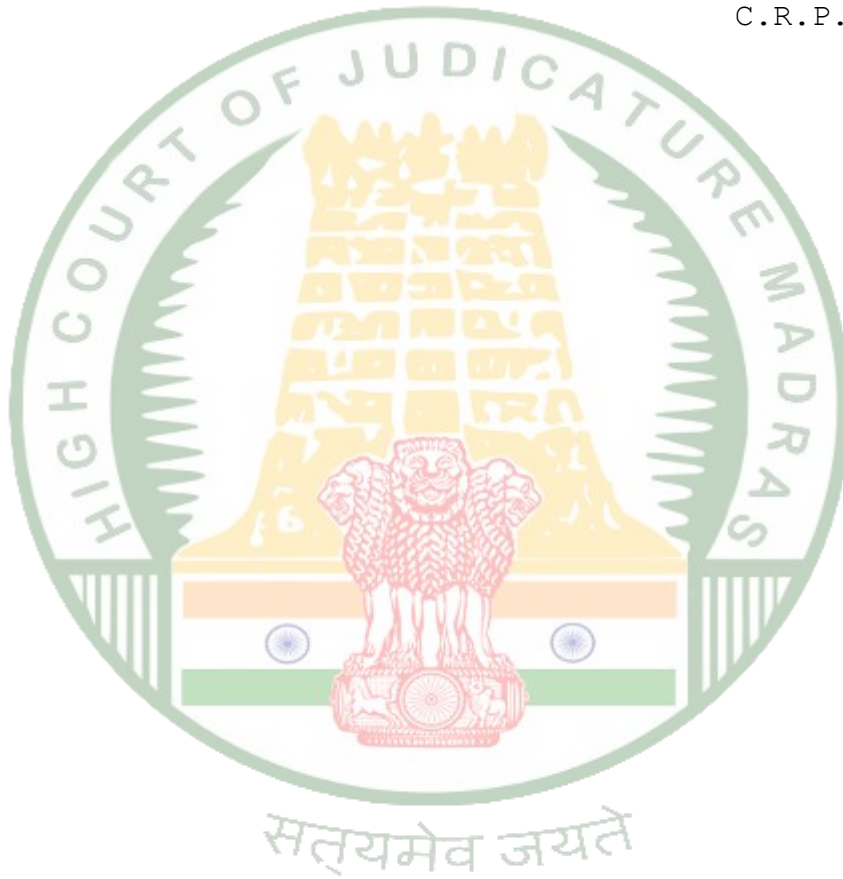
To

The XVIII Assistant Judge,
City Civil Court,
Chennai.

+1 cc to Mr.G.Jeremiah, Advocate,SR.199.

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C.R.P.No.4982 of 2014



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