

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.08.2016

CORAM

The Hon'ble Mr.Justice M.V.MURALIDARAN

CRP(NPD)No.1295 of 2012

and

M.P.No.1 of 2012

M.Venkatachalam

.. Petitioner

Vs.

Govindammal

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the Fair and Final Order passed on 07.02.2012 in I.A.No.289 of 2011 in O.S.No.19 of 2009, on the file of the Sub-Court, Mettur and prays to set aside the same.

Petitioner : Mr.A.Sundaravadhanam

Respondent: Mr.P.Mani

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and final order passed on 07.02.2012 in I.A.No.289 of 2011 in O.S.No.19 of 2009, on the file of the Sub-Court, Mettur in so far as against the petitioner and allow the Civil Revision Petition.

2.The revision petitioner is the defendant in a money suit filed by the respondent herein in O.S.No.19 of 2009 on the file of the Sub-ordinate Judge, Mettur. In the said suit the defendant was set ex-parte and an ex-parte decree was passed against him on 19.11.2009.

3.Thereupon, the respondent herein filed Execution Petition in E.P.No.23 of 2010 to realize the decree amount. The revision petitioner on receipt of notice entered appearance and therefore, he came to know about the ex-parte decree, the revision petitioner took out an application in I.A.No.289 of 2011 to condone the delay of 455 days in filing set aside petition. The trial Court by order dated 07.02.2012 condoned the delay on condition to deposit 1/4th of the suit claim to the credit of the above suit on or before 21.02.2012. By challenging the same the revision petitioner is before this Court.

4.I heard Mr.A.Sundaravadhanam, learned counsel appearing for the petitioner and Mr.P.Mani, learned counsel appearing for the respondent.

5.I have gone through the entire records relating to this Civil Revision Petition from the order of the learned Sub Judge, it is seen that the delay of 455 days in filing the petition to set aside ex-parte decree dated 19.11.2009 passed against revision petitioner was condoned on condition that the revision petitioner shall deposit 1/4th of the suit claim before the trial Court on or before 21.02.2012, failing which the petition stands dismissed.

6.Aggrieved over the condition imposed by the trial Court, the revision petitioner has come up with the present Civil Revision Petition. In this case an ex-parte decree was passed against the revision petitioner on 19.11.2009. The revision petitioner filed application to condone the delay of 455 days in seeking to set aside the ex-parte decree passed against him on 06.04.2011. The reason assigned by the revision petitioner to condone the delay is that he was not aware of the no instruction reported by his counsel and he came to know about

the ex-parte passed against him only when the execution petition was filed by the respondent herein and it was posted for filing counter statement by the revision petitioner. This Court is not able to understand why the revision petitioner could not file the petition to set aside the ex-parte decree along with condone delay application immediately after receiving notice in the execution petition. There is no explanation offered by the revision petitioner regarding the above said fact in the affidavit. The reason assigned by the revision petitioner is not sufficient to condone the delay in filing the set aside ex-parte application. Though the trial Court is not inclined to condone the delay, however, allowed the condone delay application on condition to deposit 1/4th of the suit claim within a stipulated period. I do not find any infirmity or illegality in the order passed by the trial Court. The revision petitioner has not made out a case to interfere with the conditional order passed by the trial Court.

7. In view of the discussion above, I do not find that the condition imposed by the trial Court is onerous. Hence, this Civil Revision Petition deserves dismissal and accordingly it is dismissed. However, to meet the ends of justice, this Court is inclined to give one more opportunity to revision petitioner to pay the 1/4th of the suit claim as

directed by the trial Court within a period of four weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

09.08.2016

Note: Issue order copy on 04.10.2017

vs

Index: Yes

Internet: Yes

To

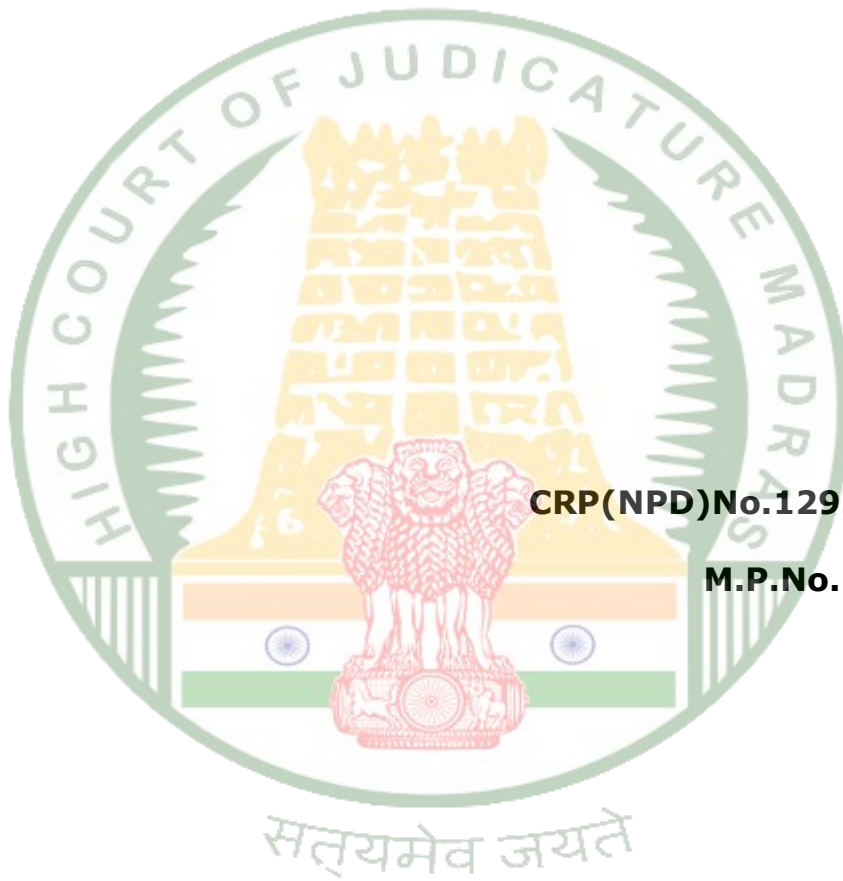
The Sub-Court, Mettur.



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M.V.MURALIDARAN,J.

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