

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P.(NPD).No.1076 of 2017
and
C.M.P.No.5168 of 2017

1. J.Ramachandran
2. R.Mathivanan
3. R.Kalpana
4. R.Ashok Kumar .. Petitioners

R.Subramanian
Represented by Power of Attorney
S.Ranganathan .. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., against the order and decretal order dated 6.1.2017 passed in I.A.No.1123 of 2015 in O.S.No.277 of 1999, on the file of the learned District Munsif Judge, Poonamallee and to set aside the same.

For Petitioner : Mr.S.T.Bharath Kumar
for Ms.P.Veena Suresh

For Respondent : Mr.T.Ravikumar

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order and decretal order dated 6.1.2017 passed in I.A.No.1123 of 2015 in O.S.No.277 of 1999, on the file of the learned District Munsif Judge, Poonamallee.

2. The revision petitioner has filed O.S.No.277 of 1999 for declaration in respect of the schedule suit property for recovery of possession. Subsequently, exparte judgment was passed by the trial court. The revision petitioner has filed an application in I.A.No.1123 of 2015, in the aforesaid suit, for condonation of 3976 days delay in filing the set aside exparte decree. The trial court after considering both the parties and dismissed the said application that the petitioner has not stated the reasons for inordinate delay. Challenging the aforesaid order, the petitioner has filed the present revision petition before this Court.

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3. According to the learned counsel for the petitioner, in the light of the judgment passed by this Court, wherein this Court has considered and allowed the revision petition on the ground of condoning

the delay by taking into consideration the earlier decision of this Court in ***Meenakshi Sundaram Textiles vs. Valliammal Textiles Ltd.***, reported in **2011(3) CTC 168(DB)** when the judgment itself is not associated with the provisions of CPC and the same is liable to be set aside. Without considering the lengthy delay in filing the application to set aside the exparte decree, the order passed by the court below is liable to be set aside.

4. The learned counsel for the respondent would submit that the revision petitioner's mother namely karpagavalli has filed the suit in O.S.No.277 of 1999, exparte decree was passed in the year 2002. Subsequently, the petitioner's mother has filed another suit in O.S.No.154 of 2005 for the very same prayer and also for the very same suit properties against one Ranganathan who was also plaintiff in the earlier suit on the capacity of power agent has filed the present suit in O.S.No.277 of 1999. According to the respondent, the suit in O.S.No.154 of 2005, the revision petitioner has filed the written statement and oral and documentary evidence has been adduced on both sides. After contested the matter, the said suit was dismissed on merits. In the

aforesaid suit, the judgment passed in the present suit also considered by the court below. Therefore, the contention of the revision petitioner that to set aside exparte judgment passed in O.S.No.277 of 1999 is unsustainable and the same is liable to be dismissed.

5. From the above said facts, it is clear that pursuant to the exparte decree passed in O.S.No.277 of 1999, the revision petitioner's mother namely Karpagavalli has filed the suit in O.S.No.154 of 2005 for the very same prayer and also for the same suit properties against the respondent. The said judgment has become final. The revision petitioner has not preferred any appeal. Therefore, now, the revision petitioner has challenged the present exparte judgment passed in O.S.No.277 of 1999 unsustainable in law. The contention of the revision petitioner that in the light of the decision of this Court in **Meenakshi Sundaram Textiles v. Valliammal Textiles Ltd.**, reported in **2011(3) CTC 168**, that the exparte judgment passed by the trial court is not inconsonance under Section 2(9) of C.P.C. The said contention of the petitioner has no force in the facts of the present case is concerned for the simple reason that subsequent to the exparte decree, the revision petitioner's mother has

filed the subsequent suit in O.S.No.154 of 2005 and in the aforesaid suit, after the death of Karpagavalli, the revision petitioner also impleaded as a party in the said suit. After contest, the said suit was dismissed. After inordinate delay of more than 3976 days and without showing any sufficient reasons in the affidavit, this Court is not inclined to entertain the revision petition and therefore, the order passed by the court below is confirmed and there is no warrant to interfere with the order passed by the court below.

6. In view of the facts and circumstances of the case, this Revision Petition fails and accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

30.11.2017

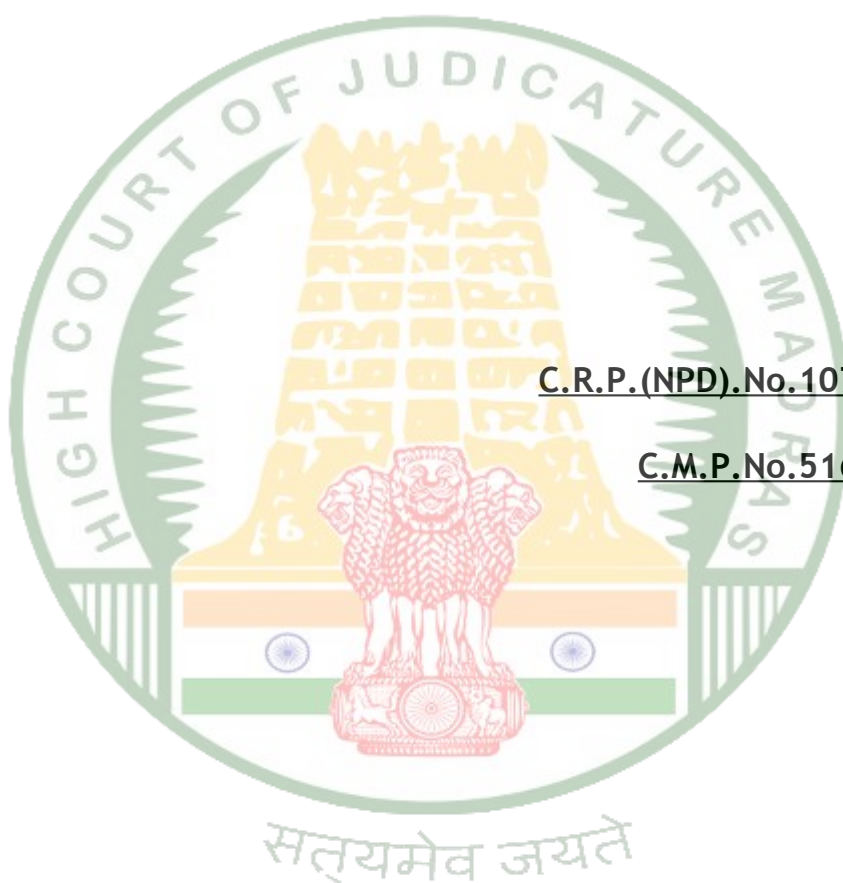
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Speaking Order/Non-Speaking Order
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To
The District Munsif Judge,
Poonamallee.

D. KRISHNAKUMAR, J.,

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