

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.NPD.No.1597 of 2014

and

CMP.No.1 of 2014

M.Saravanan

..Petitioner

Vs.

A/M Shanmuga Selva
Vinayaga Thirukoil
Rep. by its Executive Officer

..Respondent

PRAYER:

Civil Revision Petition is filed under Article 227 of the Constitution of India against the Order made in E.A. No.3268 of 2013 in E.P.No.3384 of 2011 in OS.No.2598 of 2005 dated 12.03.2014 on the file of X Assistant Judge, City Civil Court, Chennai.

For petitioner

:Mrs.Meenakshi

For respondent

:Mr.R.Mahalingam

ORDER

According to the petitioner, the respondent herein filed a suit in O.S.No.2598 of 2005 before the City Civil Court, Chennai for recovery of possession against the petitioner herein and others. The petitioners were set ex parte and an ex parte decree was passed on 07.12.2009. As the Judgment and Decree passed by the Trial Court became final, the respondent filed a petition in E.P.No.3384 of 2011 for executing the decree passed in the above suit. In the said Execution Petition as well, the petitioner herein and others were set ex parte resulting to passing of an ex parte order on 13.02.2013 in which delivery of possession was ordered against the petitioner herein and others. Pursuant to the said order, the petitioner herein filed an application in E.A.No.3268 of 2013 to condone the delay of 134 days in filing an appeal to set aside the ex parte order passed in E.P.No.3384 of 2011. The said application was also dismissed by the court below. Hence, the petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the petitioner would submit that the petitioner had filed an application in E.A.No.3268 of 2013 to condone the delay of 134 days in filing a petition to set aside the said ex parte order. But, the executing court, without considering

the reasons for the delay stated in the affidavit, has erroneously dismissed the said application. The learned counsel for the petitioner would further submit that the executing court should have liberally considered the application for allowing the above application so as to enable the petitioner herein to prosecute the case on merits.

3. On the other hand, the learned counsel for the respondent would submit that, the court below has rightly dismissed the contentions of the petitioner stating that sufficient reasons to condone the delay have not been shown in the affidavit filed by the petitioner. As there is no warrants to interfere in the above order passed by the executing court, the present Civil Revision Petition is liable to be set aside.

4. Heard, the learned counsel for the petitioner and respondent and perused the materials on record.

5. It is an admitted fact that the respondent herein filed a suit for recovery of possession and obtained an ex parte decree on 07.12.2009. Pursuant to the said decree, the respondent filed an Execution Petition in EP.No.3384 of 2011 and in this petition also

the petitioner was set ex parte and ex parte order was passed. Moreover, the above petition in E.A.No.3268 of 2013 had been filed by the petitioner only after a lapse of 134 days. According to the petitioner, due to the bonafide reason of illness only, the petitioner was not able to appear before the executing Court and the said delay was neither wilful nor wanton.

6. By considering the delay of 134 days and in the light of the decision of the Hon'ble Supreme Court in the case of ***Esha Bhattacharjee v. Managing Committee of Raghunathpur, Nafar Academy and others [2013(5) CTC 547]*** wherein, the Hon'ble Supreme Court has held that there shall be a liberal, pragmatic and justice oriented approach in condoning the delay applications, this court is inclined to interfere with the order passed by the executing court in E.A.No.3268 of 2013 and set aside the same.

7. Accordingly, the Civil Revision Petition is allowed on payment of cost of Rs.1,000/- (Rupees Thousand only) to the Tamil Nadu Mediation and Conciliation Centre, High Court of Madras, Chennai.

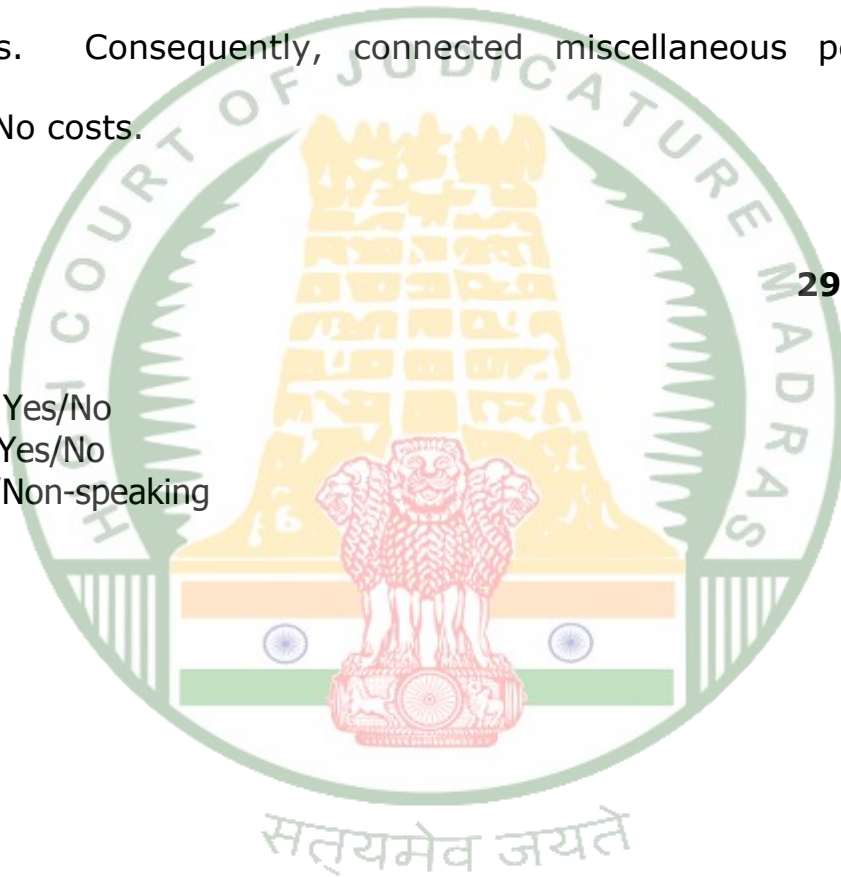
8. In the event of restoring the application in

E.A.No.3268 of 2013, the executing Court is directed to dispose of the Execution Petition in E.P.No.3384 of 2011 as expeditiously as possible.

9.The Civil Revision Petition is disposed of with above directions. Consequently, connected miscellaneous petition is closed. No costs.

29.06.2017

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Internet: Yes/No
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D. KRISHNAKUMAR.J

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To

The X Assistant Judge,
City Civil Court,
Chennai.



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