

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P.(NPD).No.1831 of 2017
and
C.M.P.No.8777 of 2017

M.Jayakumar

Petitioner

Vs.

Devaki (Deceased)

R.Natarajan (Deceased)

Defendants

1.N.Sudha

2.N.Niveditha

3.N.Krithika

4.N.Navaneethamuragan

Respondents

(Respondents 1 to 4 are the
legal heirs of the deceased
1st defendant)

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order and decretal order passed in I.A.No.9601 of 2013 in O.S.No.1462 of 2011 by the Court of the XIV Assistant City Civil Judge, Chennai dated 26.09.2016 and prays that the same may be set aside.

For Petitioner : Mr.S.Baskaran

For Respondents : Mr.P.Raja

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order 26.09.2016 passed in I.A.No.9601 of 2013 in O.S.No.1462 of 2011 on the file of XIV Assistant City Civil Judge, Chennai.

2. The petitioner herein filed a suit in O.S.No.1462 of 2011 for declaration and consequential relief. The respondent herein defended the suit by filing written statement. Since the defendant failed to appear before the trial court, he was set exparte and exparte decree was passed on 27.07.2012. Thereafter the defendants died. Therefore, the legal heirs of the 2nd defendant filed the application to condone the delay of 322 days to set aside the exparte decree dated 27.07.2012.

3. The petitioner / plaintiff has filed counter before the court below by raising objection against the application. After considering the arguments of both the parties, the court below has allowed the application on payment of cost of Rs.3,000/-. Challenging the same, the petitioner/plaintiff has filed the present revision petition before this Court.

4. According to the learned counsel for the petitioner, there

is no reason explained in the affidavit filed in support of the petition for condoning the delay in filing the petition to set aside the exparte decree and the court below allowed the application on payment of cost of Rs.3,000/- only. Therefore, the order passed by the trial court is liable to be set aside.

5. Per contra, the learned counsel for the respondent would submit that the court below has considered the argument of the respondent and the judgment passed in O.S.No.1462 of 2011 which is not inconsonance under Section 2(9) of C.P.C. In support of his submission, he relied upon the decision of this Court in the case of *M/s.Meenakshisundaram Textiles represented by its Managing Director vs. M/s.Valliammal Textiles Ltd.*, reported in **CDJ 2011 MHC 2388**. Therefore, there is no warrant to interfere with the order passed by the trial court and the same is liable to be set aside.

WEB COPY

6. By considering the rival submissions of both the parties from the facts, it is clear that the deceased defendants herein has filed the application to condone the delay of 322 days in filing the application

to set aside the exparte decree. Pending the said application, the defendants dies and the legal heirs of the deceased were impleaded as parties in the said application. Further, the court below has considered the reasons stated in the said affidavit and allowed the application on payment of cost of Rs.3,000/-.

7. The Hon'ble Supreme Court in the case of ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others*** reported in **2013 5 LW 20**, has held that there shall be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice. The terms sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

8. In the light of the decision cited supra, and the violation of

the procedure as contemplated under Section 2(9) of C.P.C., there is no error or illegal in the order passed by the court below. However, by taking into consideration of inordinate delay, this Court of a view, that the said delay shall be compensated by imposing heavy cost on the respondents. Hence, the respondents is directed to pay the cost of Rs.5,000/- in addition to the aforesaid cost of Rs.3,000/- imposed by the trial court.

9. In view of the above and by the ends of justice, this Court is inclined to pass the following orders:

i) The order passed by the trial court in I.A.No.9601 of 2013 in O.S.No.1462 of 2011 is modified to the extent that the respondent shall pay additional sum of Rs.5,000/- towards cost to the revision petitioner within a period of two weeks from the date of receipt of a copy of this order.

ii) In the event of the said conditional order is complied with, the trial court is directed to dispose of the application under Order IX Rule 13 as expeditiously as possible.

iii) Thereafter, the trial court is directed to dispose of the suit in accordance with law as expeditiously as possible.

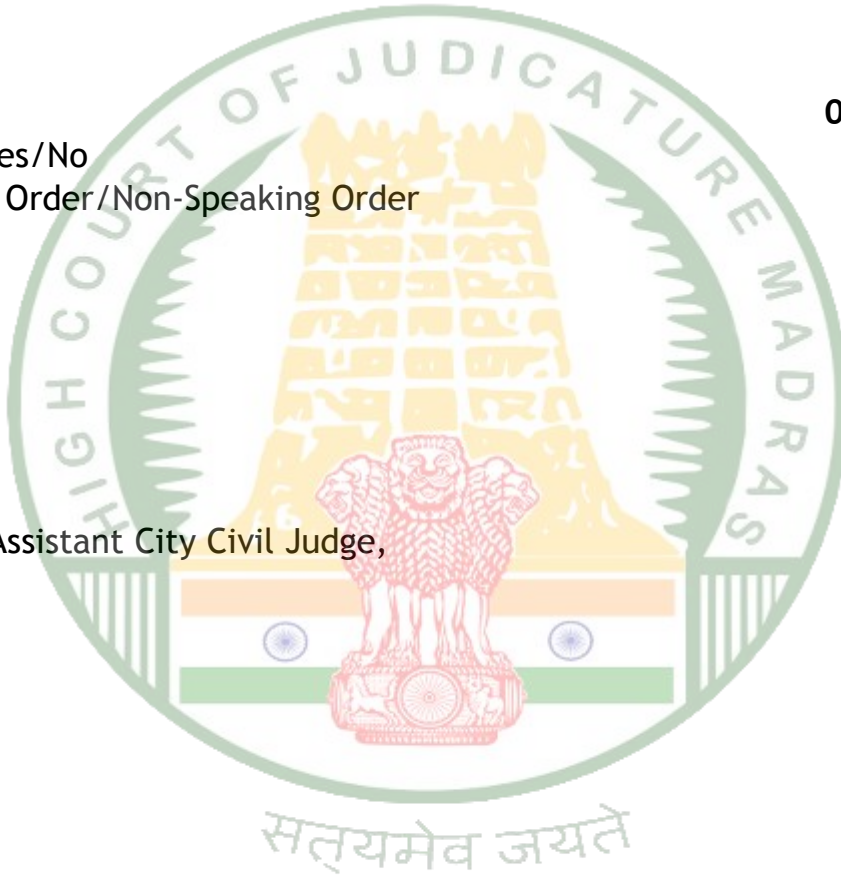
With the above directions, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.11.2017

Index: Yes/No
Speaking Order/Non-Speaking Order
ssn

To

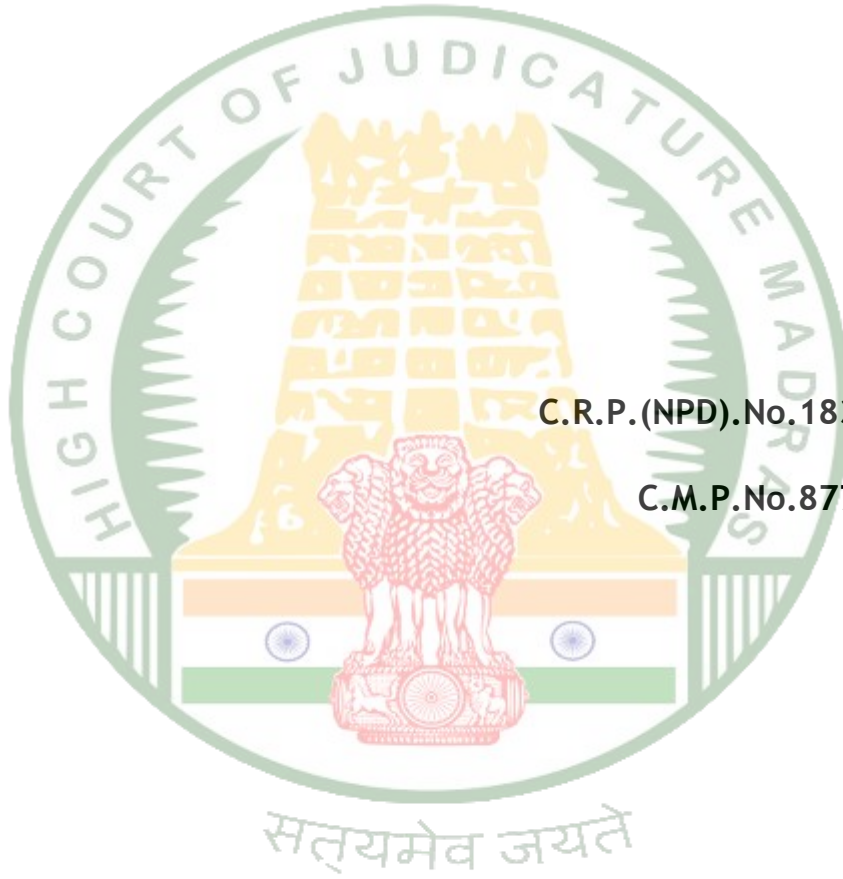
The XIV Assistant City Civil Judge,
Chennai.



WEB COPY

D. KRISHNAKUMAR, J.,

ssn



C.R.P.(NPD).No.1831 of 2017
and
C.M.P.No.8777 of 2017

WEB COPY

01.11.2017