

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2017

CORAM

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

CRP. (NPD). No.1901 of 2017

and

CMP.No.9194 of 2017

Pachamuthu @ Balakrishnan

..Petitioner

Vs.

1.Sakunthala

2.Sadavarnam

3.Minor Vijaya

4.Minor Soundarya

5.Minor Sasikala

Minors 3 to 5 Represented by Next Friend Mother-
Sakunthala (1st Respondent)

..Respondents

PRAYER:

Civil Revision Petition is filed under Section 115 of the Civil Procedure Code to set aside the Order and Decree dated 02.01.2017 made in I.A.No.421 of 2015 in O.S.No.13 of 2010 on the file of the Principal District Judge, Cuddalore District, Cuddalore.

For petitioner :Mr.K.A.Ravindran

ORDER

The learned counsel for the petitioner would submit that the respondents herein filed a suit in OS No.13 of 2010 for partition of 176/180 shares in the suit properties. The first defendant in the suit assured the petitioner, that he would contest the suit on her behalf and on behalf of the petitioner and therefore, he had not chosen to file a written statement in time. Hence, the defendants were set ex parte which resulted in ex parte decree passed against the petitioner herein on 12.07.2010. Subsequently, the respondents herein filed an application for passing of final decree in the said suit. In this regard, a notice was served to the petitioner. On receipt of notice, the petitioner came to know that an ex parte decree was passed on 12.07.2010.

2. According to the petitioner, the aforesaid property was purchased from the first defendant under a registered sale deed. Due to bonafide reason, the petitioner filed an application in I.A.No.421 of 2015 to condone the delay of 1755 days in filing

the application to set aside the ex parte decree passed in the main suit. The respondent herein filed a counter in the said application. After considering the submissions made by the learned counsel for the petitioner and respondents, the learned District Judge has rejected the instant application. Hence, the petitioner has filed this Civil Revision Petition before this Court.

3. From the above said facts, the learned District Judge has rejected the application, after perusing the counter affidavit filed by the respondents in the above application, wherein it has been stated that the second defendant / the petitioner has purchased the property by a registered sale deed from the first defendant in the suit, but the petitioner herein had bonafidely believed that the first defendant would contest the suit on behalf of the petitioner herein. The petitioner had not produced any documentary evidences in support of his claim for the inordinate delay in filing the application. Moreover, the aforesaid application has been filed in the year 2016, nearly after 5 years from passing the final decree in the main suit. Hence, there is no sufficient reason given in the affidavit and no materials has been placed before the court below by the

petitioner for the inordinate delay in filing the application to set aside *ex parte* decree. The court below has rightly dismissed the above application, by rejecting the contention of the petitioner.

4. At this juncture, it is useful to refer the decision of the Hon'ble Supreme Court in ***H. DOHIL CONSTRUCTIONS COMPANY PRIVATE LIMITED Vs. NAHAR EXPORTS LIMITED AND ANOTHER***, reported in **(2015) 1 SCC 680**, wherein it is held as follows:

" 24. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but

grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered." and hence this court does not warrant to interfere with the order passed by the court below.

5. In view of the facts and circumstances of the case and the decision cited supra, this court does not warrant to interfere with the order passed by the court below. Thus, there is no error or illegality in the order passed by the court below.

6. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

19.06.2017

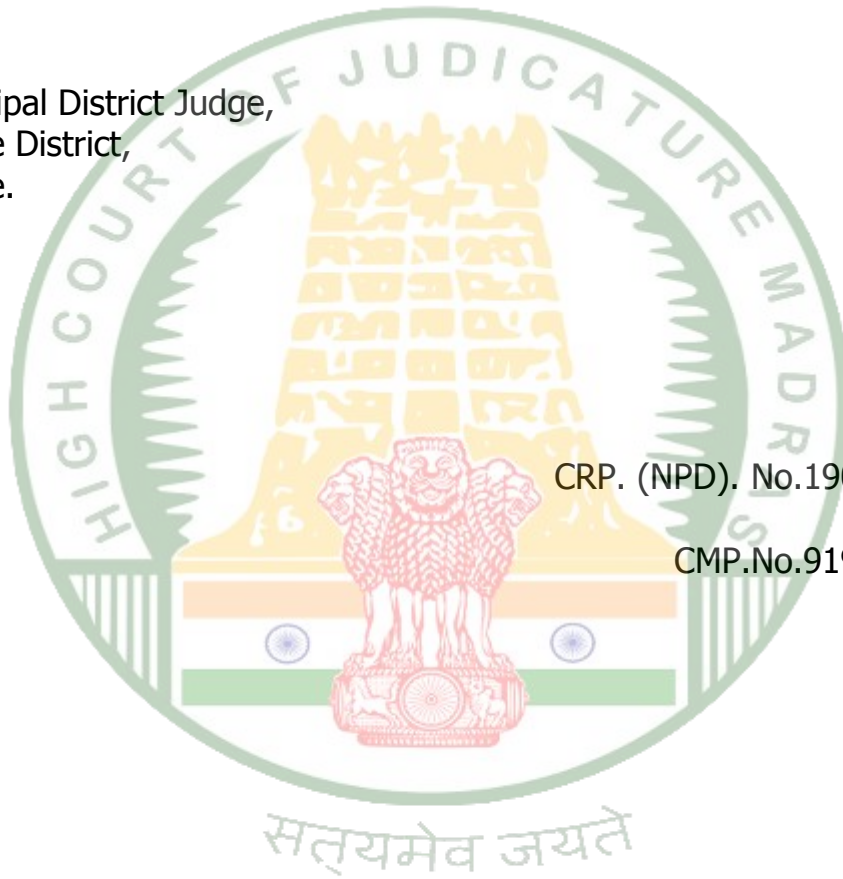
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D. KRISHNAKUMAR.J

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To

The Principal District Judge,
Cuddalore District,
Cuddalore.



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