

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD) NOS.2233 AND 2234 OF 2017
AND CMP NO.10608 OF 2017

Anjamani ... Petitioner in both CRPs'

Vs.

Thandavarayan ... Respondent in both CRPs'

PRAYER: Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure against the order dated 23.02.2017 made in 19R No.229 of 2017 and 19R No.5042 of 2016 respectively, in I.A.No.... of 2016 in I.A.No.1358 of 2013 in O.S.No.355 of 2011 on the file of the Principal District Munsif Court, Ulundurpet.

For Petitioner : Mr.C.Prabakaran

For Respondent : No appearance

COMMON ORDER

The Civil Revision Petition in CRP (NPD) No.2233 of 2017 has been filed against the rejection of an application to condone the delay of 797 days in paying cost to the respondent for restoring I.A.No.1358/2013, which was dismissed on 11.07.2014.

2. The Civil Revision Petition in CRP (NPD) No.2234 of 2017 is directed against the rejection order passed in 19R No. 5042 of 2016 on 20.03.2017. The petition was filed to restore the I.A.No. 1358 of 2013 which was dismissed on 11.07.2014, in the I.A No.1358 of 2013 was filed to condone the delay of 678 days in filing the petition to set-aside the *exparte* decree under Order IX Rule 13 of the C.P.C

3. The petitioner is the second defendant in the suit filed for permanent injunction restraining the defendants from interfering peaceful possession and enjoyment of suit property of the plaintiff. Even though, the second defendant entered appearance, has failed to defend the case. Hence, she was set *exparte* and an *exparte* decree was passed on 28.03.2013. The petitioner has filed a petition under Order IX Rule 13 of the C.P.C to set aside the *exparte* decree with the delay of 628 days. The condone delay petition was numbered as I.A. No.1358 of 2013. After enquiry, the delay was condoned on condition that the petitioner shall pay a sum of Rs.2,000/- to the respondent on or before 10.07.2014, failing which the petition will stand dismissed automatically. The petitioner failed to comply with the condition and therefore the conditional order has taken effect on 11.07.2014.

4. It is stated by the petitioner that she has gone out of station to eke out her livelihood and returned only after a period of three years. Thereafter, the present applications were filed. The first application is to condone the delay of 797 days in making the payment of costs, under Section 148 of the Civil Procedure Code. The second application was filed under Order IX Rule 9 read with Section 151 of the Civil Procedure Code to restore the petition to condone the delay of 628 days in filing the petition to set aside the exparte decree.

5. From the above narration of facts, it could be seen that the petitioner was totally lethargic in pursuing her remedy. As per under Section 148 of the Civil Procedure Code, any period fixed or granted by the Court for doing any act prescribed, the Court may, in its discretion, from time to time, enlarge such period (not exceeding 30 days in total) eventhough, the period originally fixed or granted may have expired. Therefore, the time cannot be extended beyond 30 days. In the present case, there is a delay of 797 days in payment of cost and which is not sufficiently explained to exercise the discretion of the Court. Further, after condoning the delay in payment of costs, yet the delay in filing the petition to restore I.A.No.1358 of 2013, which was

dismissed for default has to be considered. Here again, there is no sufficient cause shown.

6. In the judgment of the Hon'ble Supreme Court in **ESHA BHATTACHARJEE VS. MANAGING COMMITTEE OF RAGHUNATHPUR NAFAR ACADEMY AND OTHERS [2013 (12) SCC 649]** it has been held as follows:

(i) There should 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.

(ii) 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.

7. The petitioner has not been vigilant rather lethargic in pursuing her remedy and reason for the delay is not sufficiently explained. Therefore, the Trial Court has rightly dismissed the petitions.

There is no error or illegality in passing such orders and therefore, the orders dated 23.02.2017, passed in 19R No.229 of 2017 and 19R No.5042 of 2016 respectively, in I.A.No....of 2016 in I.A.No.1358 of 2013 in O.S.No.355 of 2011, by the Trial Court are upheld.

8. In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

12.07.2017

Index : Yes/No
Internet : Yes/No
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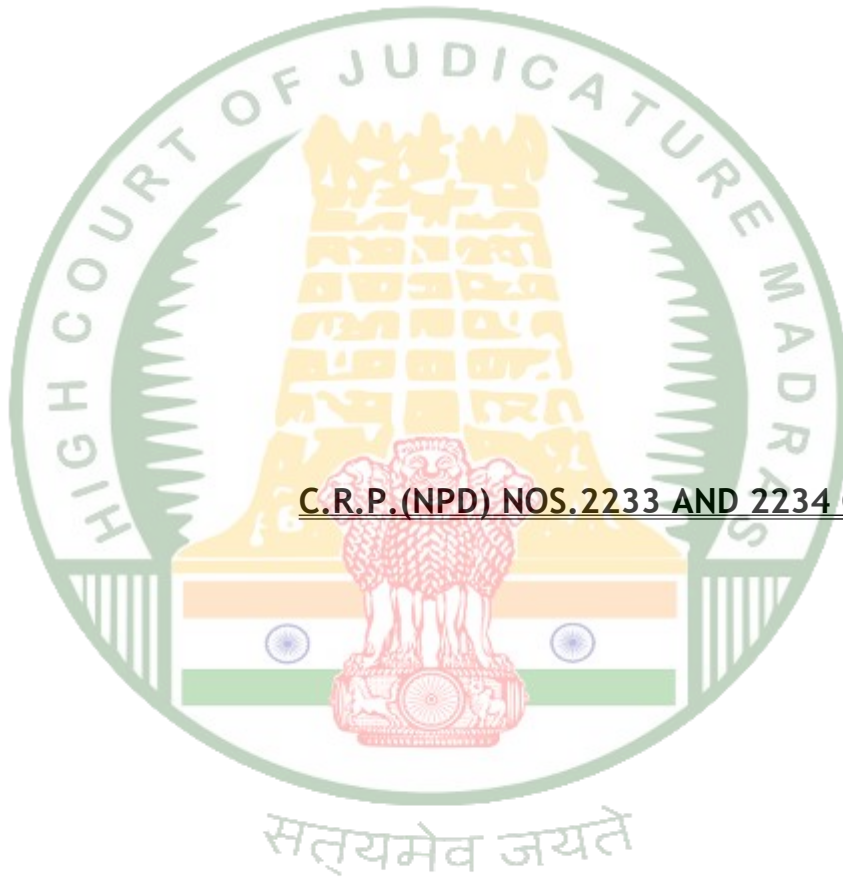
To

The Principal District Munsif
Ulundurpet.

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M.GOVINDARAJ, J.

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