

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(NPD) NOS.2320 AND 2321 OF 2014
AND M.P.NO.1 OF 2014

Kalimuthu

... Petitioner
in both CRPs'

Vs.

Minor Selva Karthick
Rep. by her mother and natural guardian
Ranganayaki

... Respondent
in both CRPs'

PRAYER: Civil Revision Petitions filed under Section 115 of the Civil Procedure Code, against the judgment and decree passed by the learned Subordinate Judge, Udumalpet, made in RDCF No.6950 of 2013 and I.A.No.754 of 2011 respectively, in O.S.No.13 of 2011 dated 04.03.2014.

For Petitioner : Mr.N.Umapathi
For Respondent : Mr.C.Selvaraj

COMMON ORDER

These Civil Revision Petitions are directed against the order dated 04.03.2014 passed in RDCF No.6950 of 2013 and I.A.No.754 of 2011 respectively, in O.S.No.13 of 2011.

2. The application in I.A.No.754 of 2011 to condone the delay of 20 days in filing the application to set aside *exparte* decree was dismissed by the Trial Court on the ground that the petitioner did not produce any evidence as to the medical treatment taken by him and not examining any Doctors on his side.

3. The petition in RDCF No.6950 of 2013 to accept the written statement filed in O.S.No.13 of 2011 was dismissed by the Trial Court on the ground that it was not filed within the time prescribed under the Act.

4. On considering the facts and circumstances of the case, the finding of the Trial Court in dismissing the applications to condone the delay as well as to accept the written statement, is not based on sound reasons.

5. The Hon'ble Supreme Court, time and again has held that failure to adopt extra vigilance should not have been made as a ground for ousting him from the litigation with respect to the property, particularly where the inconvenience caused to the other party can be compensated by awarding appropriate and exemplary costs.

6. In the instant case, the petitioner herein / respondent entered appearance on 10.03.2011. Since he did not file written statement, he was set *exparte* on 07.04.2011 and an *exparte* decree was passed on 26.04.2011. The time gap between the adjudication shows that there are chances for the petitioner to miss the hearings on account of some medical ailment.

7. The Hon'ble Supreme Court in **M.K.PRASAD VS. P.ARUMUGAM [2001 (6) SCC 176]** has observed that in construing Section 5 of the Limitation Act, the Court has to keep in mind that discretion in the section has to be exercised to advance substantial justice. It was further observed that even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to

castigating him as an irresponsible litigant. He should have been more vigilant but his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property.

8. The case which is dealt by this Court is one of partition suit and certainly the stake involved is very high and the parties should not be knocked out on technical grounds. Therefore, this Court considers that the dismissal orders passed by the Trial Court are liable to be set aside. Accordingly, the order dated 04.03.2014 passed in RDCF No.6950 of 2013 and I.A.No.754 of 2011 respectively, in O.S.No.13 of 2011 are set aside and the Trial Court is directed to dispose of the matter on merits and in accordance with law, as expeditiously as possible.

9. Considering the hardship caused to the respondent / plaintiff, a sum of Rs.5,000/- (Rupees Five Thousand Only) shall be paid by the petitioner to the respondent, within a period of two weeks from the date of receipt of a copy of this order.

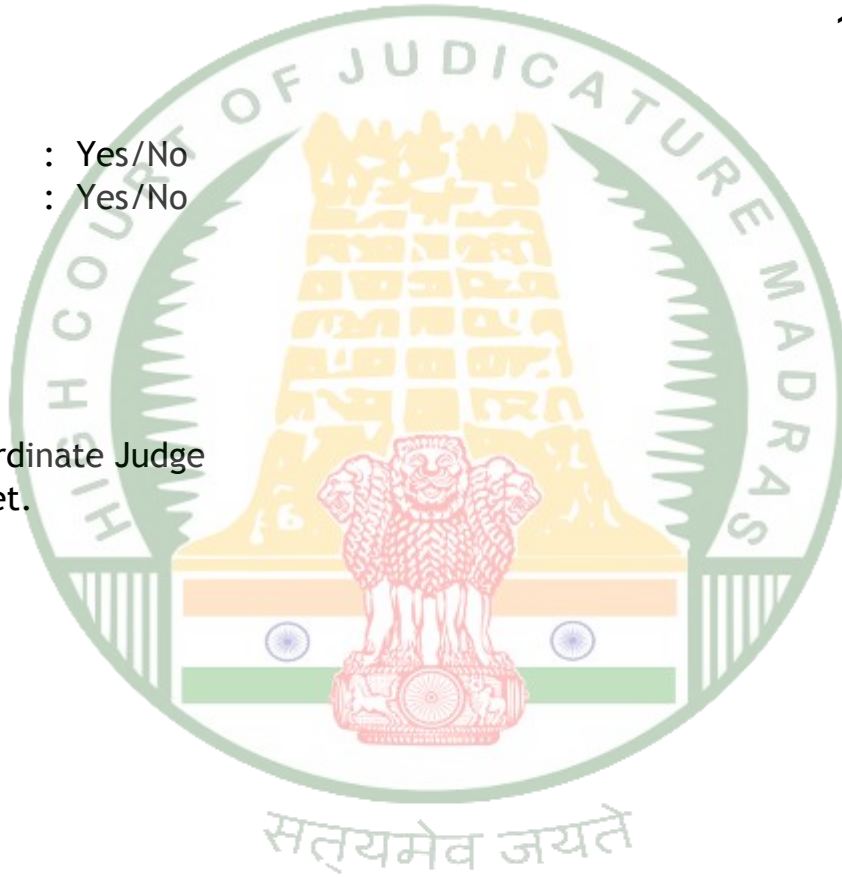
10. Both the Civil Revision Petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

19.07.2017

Index : Yes/No
Internet : Yes/No
TK

To

The Subordinate Judge
Udumalpet.



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M.GOVINDARAJ, J.

TK



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