

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD). No.238 of 2014

and

M.P.No.1 of 2014

1.Ramachandran
2.Jayaraman
3.Ravindran

... Petitioners

..Vs..

1.Anjappan
2.Veluchamy
3.Arumugam

... Respondents

Prayer: This Civil Revision Petition has been filed under Article 227 Constitution of India, to set aside the order and decreetal order dated 09.10.2013 passed in E.A.No.10 of 2013 in E.P.No.13 of 2011 in O.S.No.310 of 2002 on the file of the learned District Munsif Cum Judicial Magistrate, Vedaranyam.

For petitioners : Mr.S.Sadasivan
For Mr.S.Sathiamurthi

For Respondents :No appearance

ORDER

Challenging the fair and decreetal order dated 09.10.2013 passed in E.A.No.10 of 2013 in E.P.No.13 of 2011 in O.S.No.310 of 2002 on the file of the learned District Munsif Cum Judicial Magistrate, Vedaranyam, this Civil Revision

Petition is filed.

2. Even though, notice served through Court as well as privately, none appeared for the respondents. The respondents/decreed-holders filed the Execution Petition in E.P.No.13 of 2011 before the Munsiff Court, Vedaranyam. The petitioner has not filed counter affidavit in the aforesaid Execution Petition and subsequently, by order dated 10.12.2012, exparte order passed in the Execution Petition and thereafter, the petitioner filed an application in E.A.No.10 of 2013 in the Execution Petition and E.P.No.13 of 2012.

3. An application filed in E.A.No.10 of 2013 to set aside the exparte order passed in Execution Petition dated 10.12.2012, was dismissed by the Court below for the reason that the petitioner has not filed the application to condone the delay in setting aside the exparte order.

4. Heard the learned counsel for the petitioner and notice served, but none appeared for the respondents.

5. According to the counsel for the petitioner no notice has been served on the petitioner in the E.P. Therefore, he filed an application to set aside exparte order passed in the E.P. Hence, there is no wilful or wanton and the petitioner filed the application to set aside the exparte order passed by the Court below for the bonafide reason as stated in the application.

6. According to the counsel for the petitioner, petitioner came to know about the exparte order passed by the Court below only after serving notice to

the petitioner. Therefore, from the date of knowledge, petitioner has filed the present application within time. Therefore, there is no question of time barred in filing the instant application.

7. The Court below, without considering the contentions of the petitioner, dismissed the said application stating that the petitioner has not filed an application to condone the delay in filing the application to set aside the exparte order. Therefore, in the interest of justice, this Court inclined to interfere with the order passed by the Court below. Hence, the order passed in E.A.No.10 of 2013 in the above suit is set aside and the same is remanded back to the Court below to consider afresh and pass appropriate orders in accordance with law after providing opportunity to the parties concerned as early as possible.

8. In the result, Civil Revision Petition is allowed with the above observations. No costs. Consequently, connected Miscellaneous Petitions is closed.

16.06.2017

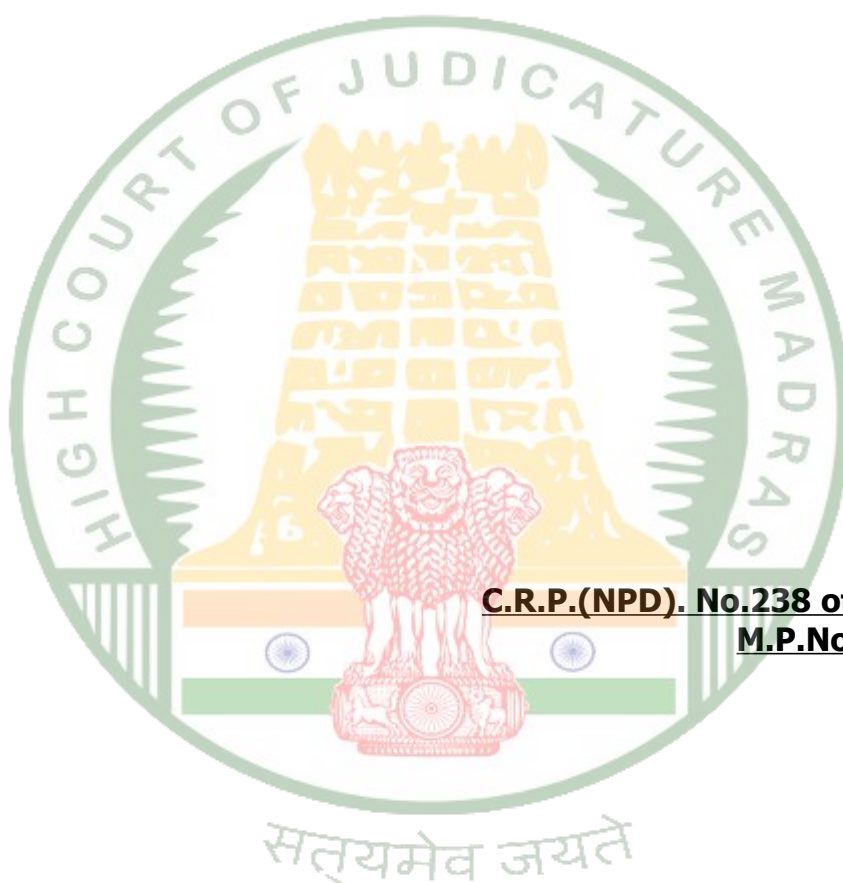
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To
The District Munsif Cum Judicial Magistrate, Vedaranyam.

D.KRISHNAKUMAR,J.,

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M.P.No.1 of 2014**

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