

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) NOS.2772 AND 2773 OF 2017
AND CMP NO.13130 OF 2017

R.Seedappan

... Petitioner
in both CRPs'

Vs.

Canara Bank
(A body corporate constituted under
the Banking Companies (Acquisition
and Transfer of Undertakings Act) of
1970) Having Head Office at Bangalore
and one of its branches at
Nasiyanur, Erode Taluk.
Represented by its Chief Manager

... Respondent
in both CRPs'

PRAYER IN CRP (PD) NO.2772 OF 2017: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 29.08.2016 made in C.M.A.No.28 of 2016 on the file of the Second Additional District Judge, Erode, confirming the fair and decreetal order dated 21.03.2016 made in I.A.No.395 of 2015 in O.S.No.95 of 2013 on the file of the Sub Court, Perundurai.

PRAYER IN CRP (PD) NO.2773 OF 2017: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 21.03.2016 made in I.A.No.835 of 2015 in O.S.No.95 of 2013 on the file of the Sub Court, Perundurai.

For Petitioner : Mr.V.Anandhamurthy

COMMON ORDER

The Civil Revision Petition in CRP (PD) No.2772 of 2017 is directed against the order dated 29.08.2016 passed in C.M.A.No.28 of 2016 by the learned Second Additional District Judge, Erode, confirming the fair and decreetal order dated 21.03.2016 passed in I.A.No.395 of 2015 in O.S.No.95 of 2013 by the learned Subordinate Judge, Perundurai.

2. The Civil Revision Petition in CRP (PD) No.2773 of 2017 is directed against the order dated 21.03.2016 passed in I.A.No.835 of 2015 in O.S.No.95 of 2013 by the learned Subordinate Judge, Perundurai.

3. The Civil Revision Petitioner is the defendant. The respondent is the plaintiff in the suit. The revision petitioner is the judgment debtor and also appellant in the Civil Miscellaneous Appeal. The

petitioner has borrowed a sum of Rs.85,000/- as loan from the respondent

Bank on 11.05.1999, through an agreement and deed of hypothecation for Kissan Credit Card. Since he failed to repay the amount, a mortgage suit was laid by the respondent for recovery of money and in default, for sale of the mortgaged suit property.

4. The petitioner has filed written statement and also examined himself as P.W.1 and thereafter, remained *exparte*. A preliminary decree was passed on 12.03.2014, in which, a condition was imposed to deposit the amount or before 12.06.2014. The petitioner has failed to deposit the amount and he has also not filed any appeal against the preliminary decree. Thereafter, the respondent filed an interlocutory application on 08.04.2015, on for passing of final decree, in terms of the preliminary decree dated 12.03.2014. Though the petitioner had entered appearance on 14.09.2015, he has not filed any counter affidavit. Subsequently, final decree was passed on 21.03.2016.

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5. In the meanwhile, the petitioner has filed an application to condone the delay of 542 days in filing the application to set aside the *exparte* preliminary decree. Both the applications to condone the delay as well as the application to pass final decree were disposed on 21.03.2016.

Against both the orders, the petitioner has preferred two appeals in CMA Nos.27 of 2016 and 28 of 2016 respectively. The lower Appellate Court has dismissed both the appeals, against which, the petitioner is before us.

6. Admittedly, the petitioner has borrowed a sum of Rs.85,000/- as loan, from the respondent Bank, on deposit of title deeds. The petitioner has participated in the suit proceedings and had remained *exparte* after examination of P.W.1. A preliminary decree was passed with a condition to make payment within three months, failing which, for sale of the suit properties. The petitioner has failed to comply with the conditions. Subsequently, proceedings were initiated by the respondent Bank for passing of final decree. At that stage, the petitioner has filed the application to condone the delay of 542 days in setting aside the *exparte* preliminary decree. The reason for delay was said to have been that the petitioner was suffering from Jaundice. But, neither an explanation to the day today delay nor sufficient reasons were shown in the application. Further, there is no explanation for not filing the counter statement resisting the final decree proceedings.

7. A reading of the affidavit filed in support of the condone

delay application shows that no specific details as to when he fell ill and

when he got recovered from the ailment. It cannot be said that a person continue to be suffering from Jaundice for 542 days and was taking country medicine for 542 days to recover from the same. The petitioner after making a statement to that effect, has not come out with suitable explanation or some evidence to corroborate his statement. Further, there is no explanation for the delay after he entered appearance in the final decree proceedings. The Trial Court has rightly found that the petitioner failed to exercise due diligence and was lethargic and has filed the application only with an intention of protracting the proceedings. The lower Appellate Court also has found that the petitioner after entering appearance, has failed to contest the application filed for passing of final decree. Absolutely, no reasons have been stated on that count and that the reasoning given by the Courts below are acceptable. This Court also finds that the petitioner has not shown any valid reason as to the delay caused in filing the application to set aside the *exparte* decree and contest in the final decree proceedings by filing counter, after he entered appearance. No *bonafides* shown with respect to the conditional order passed on 12.03.2014. Therefore, the orders passed by the lower Appellate Court are sustained and the same does not require any interference.

8. Accordingly, both the Civil Revision Petitions are dismissed.

No costs. Consequently, connected civil miscellaneous petition is closed.

16.08.2017

Index : Yes/No

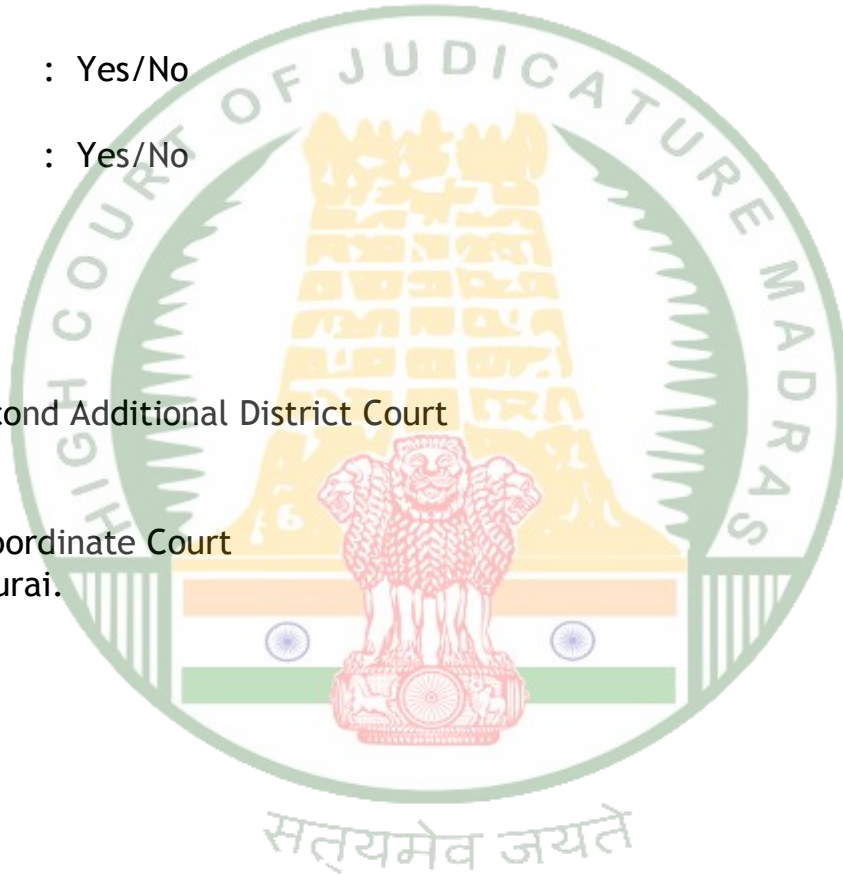
Internet : Yes/No

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To

1.The Second Additional District Court
Erode.

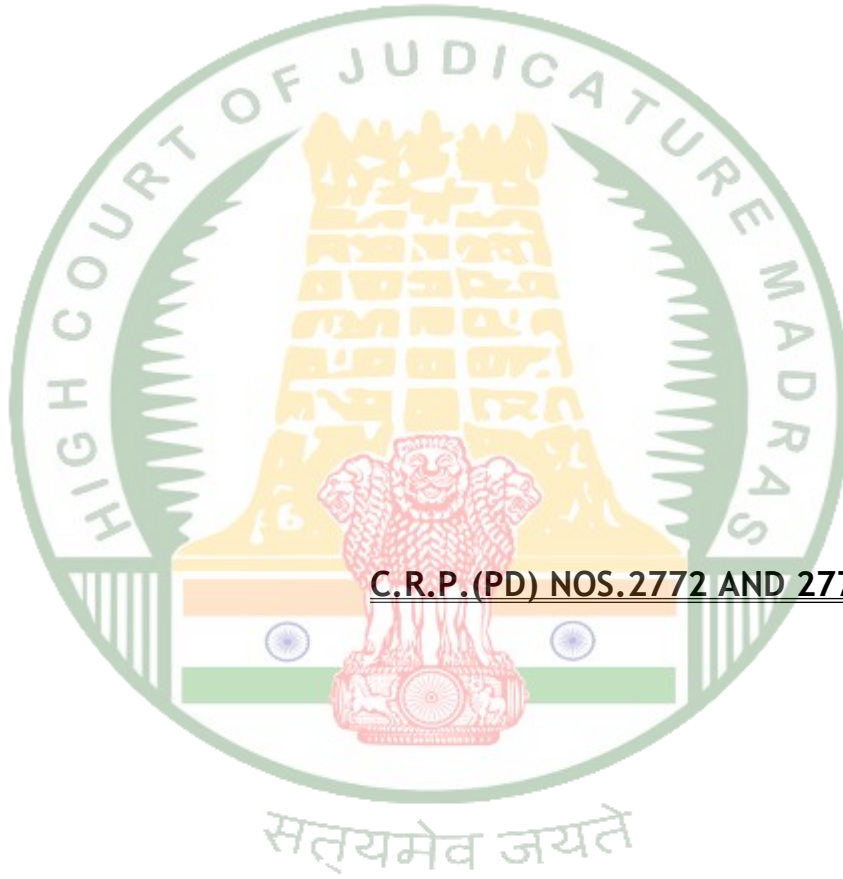
2.The Subordinate Court
Perundurai.



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M.GOVINDARAJ, J.

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