

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P. (PD).No. 2814 of 2017 &  
C.M.P.No.13292 of 2017

S.Damodharan

.. Petitioner

Vs.

Kuppusami

.. Respondent

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the decretal order dated 02.04.2016 made in I.A.No.1430 of 2014 in O.S.No.255 of 2012 on the file of the District Munsif, Attur.

For Petitioner : Mr.T.Dhanasekaran

**ORDER**

Aggrieved over the condonation of delay of 351 days in filing a petition to set aside ex-parte decree, the revision petitioner is before this Court.

2. The respondent would contend that the injunction petition filed by the revision petitioner was dismissed and he has preferred an appeal before Sub Court in CMA.No.2 of 2013. Though the respondent has filed a detailed counter in the injunction petition, failed to file the written statement in the suit under the bonafide impression, that the suit will not be proceeded till the disposal of the appeal. But he was set ex-parte on 11.10.2013 and there is a delay of 351 days in filing this petition as he it came to his knowledge belatedly.

3. Taking advantage of this ex-parte decree the revision petitioner is attempting transfer the patta in his name and is guilty of not informing the pendency of this CMA before the Sub-Court. Hence the delay should be condoned.

4. The revision petitioner opposed the petition, but the trail considering the prejudice caused to the right of the defendant/ respondent has condoned the delay on payment of costs of Rs.750/- to the revision petitioner. Aggrieved over the same the present Civil Revision Petition is filed.

5. Heard the Submissions.

6. The suit is for declaration of title to the property and for permanent injunction. The respondent had diligently contested the injunction petition by filing elaborate counter and pursued to defend the appeal filed by the revision petitioner. In the meanwhile he was set ex-parte. Against the petition to condone delay, no serious allegations of malafide came forth. If the respondent is not permitted to defend the suit, his invaluable right to property may be deprived. Considering the prejudice and balance of convenience, the trial Court has decided to condone the delay by awarding compensatory costs. In the interest of justice, the order passed by the trial Court is justified. The revision petitioner will not be prejudiced but has an opportunity to contest the case on merits.

7. In such circumstances, the order passed by the trial Court warrants no interference and the Civil Revision Petition is dismissed accordingly, No costs. Consequently connected miscellaneous petition is closed.

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Internet : Yes/No

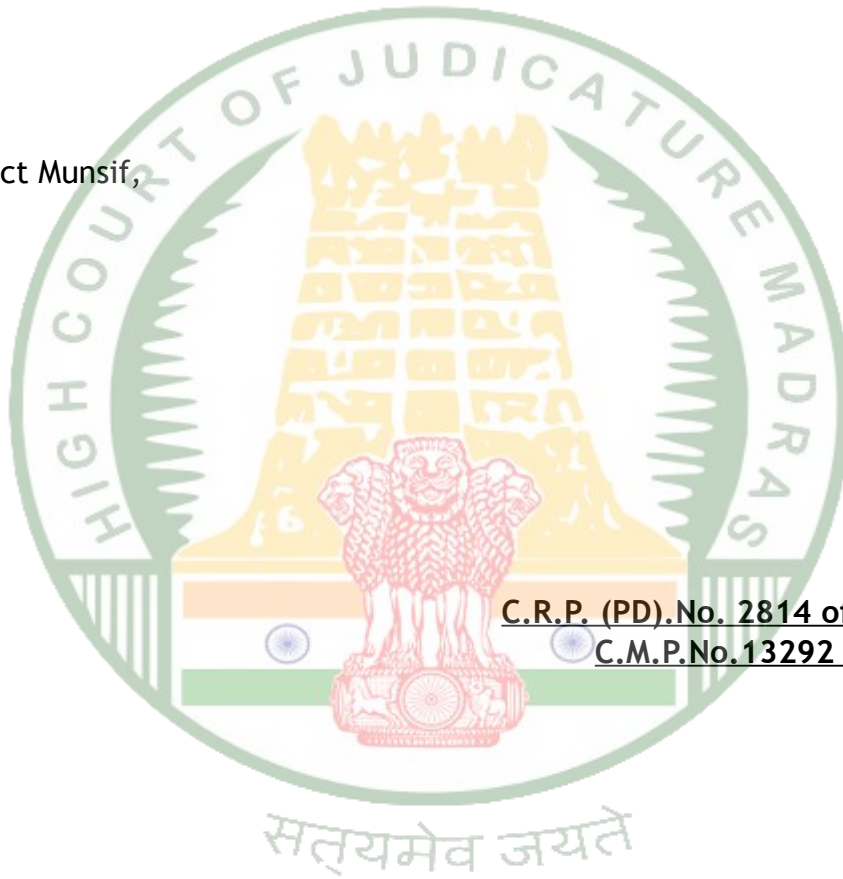
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M.GOVINDARAJ, J.

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To

The District Munsif,  
Attur.



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