

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(NPD) NO.2898 OF 2017
AND C.M.P.NO.13677 OF 2017

1. M/s.Ben Foundation Pvt. Ltd.,
Rep. by its Director Rajan Dev.

2. Rajan Dev

... Petitioners

Vs.

1. V.N.Devadoss

2. D.Padma

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order of the learned II Additional District Judge, Poonamallee, dated 12.06.2017 in I.A.No.1706 of 2015 in I.A.No.951 of 2014 in O.S.No.350 of 2007.

For Petitioners : Mr.R.Syed Mustafa

For Respondents : Mr.V.Ayyapparaja

ORDER

This Civil Revision Petition is directed against the order dated 12.06.2017 passed in I.A.No.1706 of 2015 in I.A.No.951 of 2014 in O.S.No.350 of 2007 by the learned Second Additional District Judge, Thiruvallur at Poonamallee.

2. The case of the petitioners is that the respondents filed a suit for recovery of money. They have engaged a counsel to defend the suit effectively. But the said counsel, due to inadvertence, has failed to follow up the case properly and the petitioners were set *exparte* and an *exparte* decree was passed on 30.10.2010, based on which, an execution petition was also filed. The petitioners became aware of the developments only when they received notice in the execution proceedings. Till such time, they were under the impression that the suit is pending. On receipt of such notice, they engaged another counsel and filed a petition to set aside the *exparte* decree with a delay of 1228 days. The petition to condone the delay was numbered as I.A.No.951 of 2014 and was posted for hearing on 08.06.2015. On 15.06.2015, the matter was posted for arguments and was adjourned at the request of

the petitioners, to 17.07.2015. But unfortunately, 17.07.2015 was declared as Holiday on account of Ramzan festival and no hearing date was given. Subsequently, the matter was called on 20.07.2015 and was dismissed for default. Again, the petitioners have filed another application in I.A.No.1706 of 2015 on 27.11.2015 for restoration of I.A.No.951 of 2014 filed for condoning the delay in filing the petition to set aside the *ex parte* decree.

3. The Trial Court had dismissed the application observing that the petitioners were never ready to proceed with the case and indulged in protracting the proceedings. Aggrieved over the same, the present Civil Revision Petition came to be filed.

4. According to the petitioners, for the fault of the counsel, a litigant shall not suffer. The erstwhile counsel who was handling the case, failed to follow it up properly and an *ex parte* decree came to be passed. Once the petitioners came to know of it, they have taken prompt action. But however, to their misfortune, the hearing date was declared to be Holiday.

5. The learned counsel for the petitioners would submit that they were personally appearing on all the hearings, but could not note down the date of next hearing, as 17.07.2015 was declared as a public holiday. The matter was called on 20.07.2015 and dismissed for default. Again it is the fault of the counsel, who failed to appear on the next working day.

6. The learned counsel for the respondents would strongly opposed the submissions made by the learned counsel for the petitioners and would submit that the petitioners are deliberately protracting the proceedings.

7. Heard the submissions made on either side and perused the materials available on record.

8. I have considered the submissions made by the learned counsel for the petitioners that they were personally present on all hearings and only on 20.07.2015, they were not present. The case was originally listed on 17.07.2015 and was not taken up as it was declared as

a holiday. It is the duty of the counsel to follow it up prudently on the next working day. But in the instant case, the counsel engaged by the petitioners failed to follow it up promptly. Further, the present application to restore the same was also dismissed on 12.06.2017 with an observation that the petitioners are indulging in delaying tactics. It is true that the respondents / plaintiffs are put to severe hardship by the delay caused by the petitioners / defendants. But at the same time, the case cannot be decided without hearing the defendants. In other words, the case should be decided on merits rather than on technicalities. Now that, the respondents are seeking to execute an *exparte* decree. The hapless petitioners were left in lurch due to the failure in following up the case by their counsel.

9. Considering the factual circumstances of the case, this Court is of the considered opinion that as held by the Hon'ble Supreme Court in a *catena* of judgments that a litigant shall not suffer for the fault of the counsel and is inclined to set aside the order passed by the Trial Court. Accordingly, the order dated 12.06.2017 passed in I.A.No.1706 of 2015 in I.A.No.951 of 2014 in O.S.No.350 of 2007 by the

learned Second Additional District Judge, Thiruvallur at Poonamallee, is set aside, on payment of compensatory cost of Rs.3,000/- (Rupees Three Thousand Only) payable to the learned counsel appearing for the respondents / plaintiffs before the Trial Court. On compliance of such condition, a further direction is issued to the petitioners to argue the application in I.A.No.951 of 2014, without taking any adjournment. The Trial Court is also directed to decide the matter on merits and in accordance with law without being influenced by the order passed by this Court and dispose of the same, within a period of two weeks from the date of receipt of a copy of this order.

10. With these observations and directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

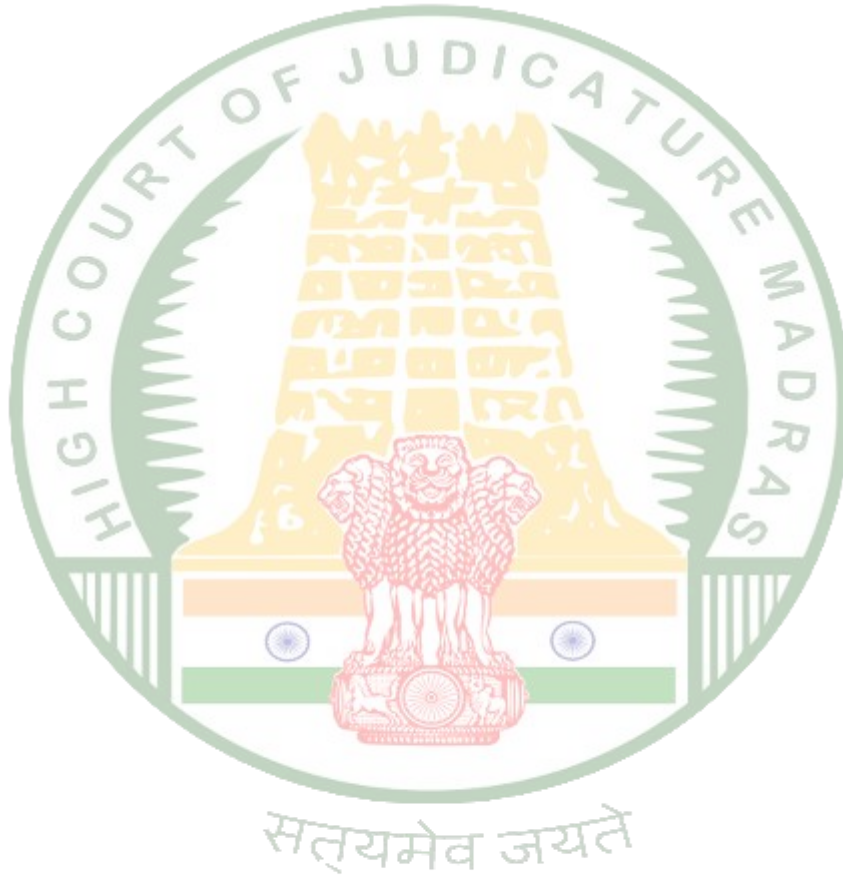
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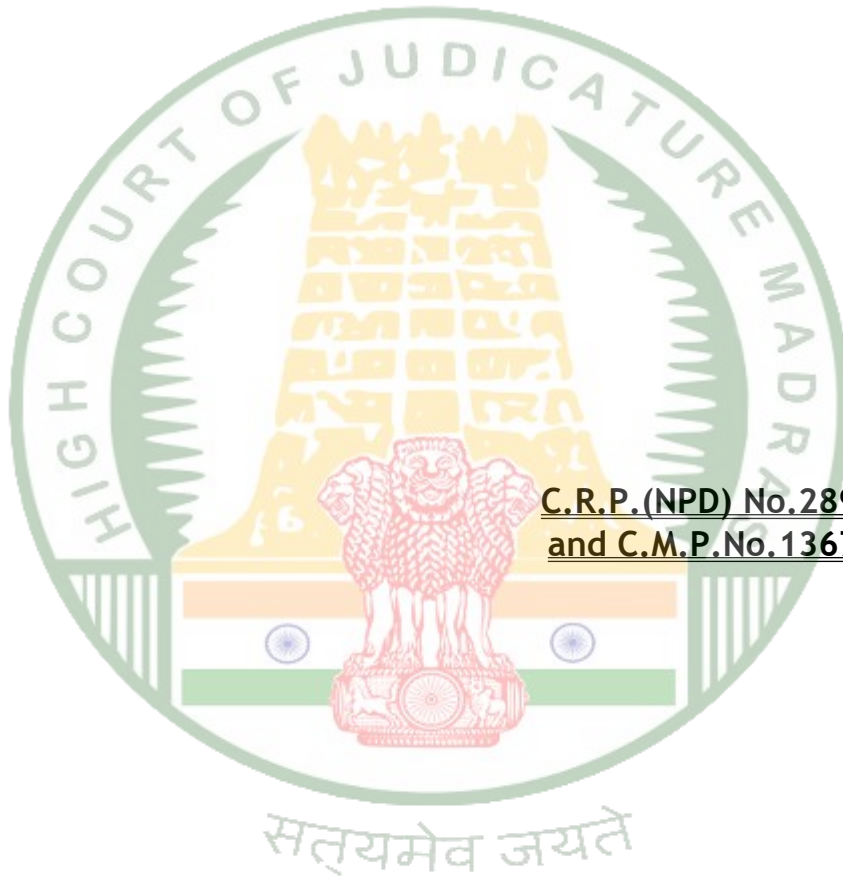
The II Additional District Judge
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M. GOVINDARAJ, J.

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