

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P.(NPD).No.3045 of 2017
and
C.M.P.No.14298 of 2017

V.G.Ramadass .. Petitioner

Vs.

V.Dinakaran .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 27.06.2017 passed in I.A.No.290 of 2015 in O.S.No.57 of 2004 on the file of the District Munsif Court, Sholingur, Vellore District.

For Petitioner : Mr.A.K.Raghavulu

For Respondent : Mr.S.Prabhu

ORDER

Aggrieved by the order passed by the trial court in I.A.No.290 of 2015 in O.S.No.57 of 2004 filed by the 3rd defendant, the plaintiff has filed this Civil Revision Petition.

2. According to the learned counsel for the petitioner, the petitioner/plaintiff has filed the suit in O.S.No.57 of 2004 for specific performance and permanent injunction. In the aforesaid suit, the petitioner has not appeared before the trial court on 14.08.2015. Thereafter exparte decree was passed. But the petitioner herein filed an application in I.A.No.290 of 2015 to condone the delay of 501 days in filing the set aside exparte decree. The aforesaid application was allowed by the court below on payment of cost of Rs.2,000/-. Challenging the aforesaid order, plaintiff has filed the present revision petition.

3. The learned counsel for the petitioner submitted that the said condone delay application was allowed without any sufficient cause. Therefore, the order passed by the Court below is liable to be set aside.

4. Per contra, the learned counsel for the respondent would submit that the revision petitioner/plaintiff has filed the suit for specific performance and exparte decree was passed only due to the absence of the revision petitioner. He could not attend the enquiry on the hearing

date and therefore, the court below has passed ex parte decree. By taking into consideration the nature of relief as prayed for in the suit, liberty shall be granted to the petitioner to decide the suit on merits. The Hon'ble Supreme Court in the light of the decision in the case of ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.***, reported in (2013) 12 SCC 649, has observed that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice. Hence, this Court feels that the application for condoning the delay of 501 days in filing the set aside petition can be allowed, by imposing heavy cost on the petitioner/3rd defendant.

5. Further, the decision of the Hon'ble Supreme Court was that, while the trial court allowed the application, the Appellate Court interfered, when that is per se illegal and arbitrary. Hence, by considering the relief as prayed for in the suit and in the light of the decision of the Hon'ble Supreme Court, and in the interest of justice, the court below has rightly allowed the application. This Court feels to

impose heavy cost by way of compensation to the revision petitioner for the inordinate delay in filing the set aside exparte order. In the light of the above facts, this Court is inclined to pass the following order:

i) The impugned order passed in I.A.No.290 of 2015 is hereby confirmed, and modified to enhance the cost of Rs.5,000/- instead of Rs.2,000/- payable by the respondent/defendant.

ii) The aforesaid cost to be paid within four weeks from the date of receipt of a copy of this order to the revision petitioner.

iii) On instructions, both the parties undertakes that they will cooperate to dispose the case before the trial court. After compliance of the said conditional order, the trial court is directed to dispose of the suit within a period of four months thereafter.

6. The learned counsel for the respondent undertakes that the written statement will be filed within two weeks after compliance of the conditional order.

7. This Civil Revision Petition is disposed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

15.11.2017

Index: Yes/No
Speaking Order/Non-Speaking Order
ssn

Note: Issue order copy on 05.12.2017

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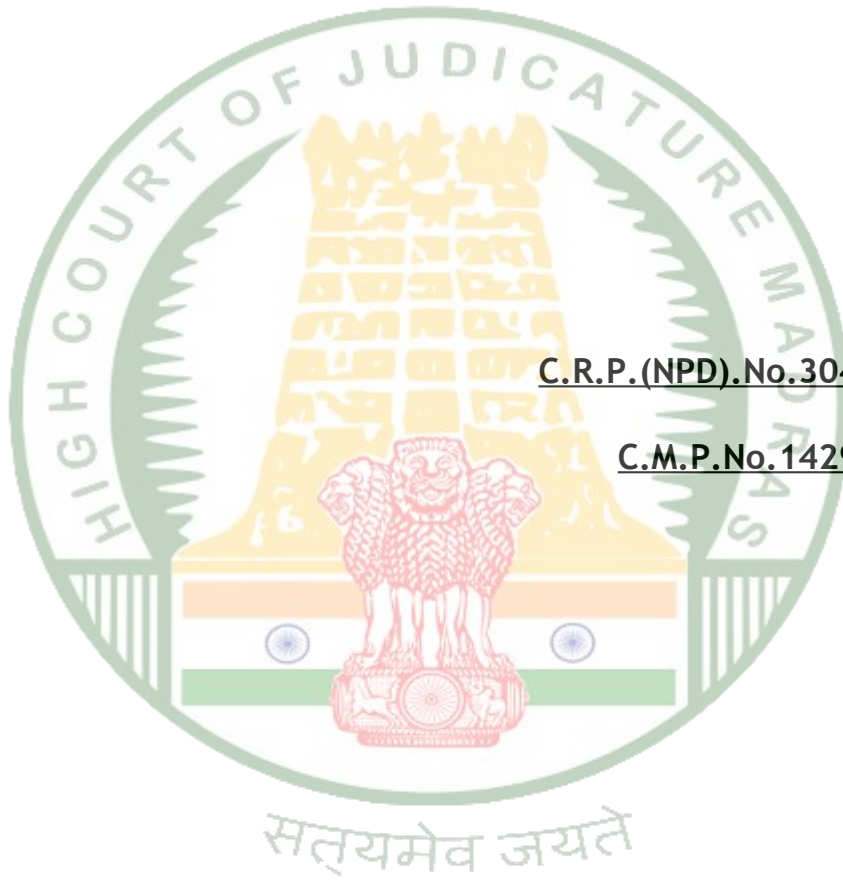
The District Munsif Court,
Sholingur,
Vellore District.



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D. KRISHNAKUMAR, J.,

ssn



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