

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3440 of 2014
& M.P.No.1 of 2014

M.Maheswari

.. Petitioner

Vs.

1.Arulmighu Malleeswarar Thirukoil
Represented by its Executive Officers
Officer at No.263, Linghi chetty street
Chennai-600 001.

2.Chandra

3.Venkatrama chettiar

4.Srinivasan

5.Domodaran Naicker

6.Jeeva

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C.,
against the fair and decretal order dated 03.07.2014 made in
C.M.P.No.1396 of 2013 in A.S.SR.No.40409 of 2013 on the file of
the Principal City Civil Court, Chennai.

For Petitioner : Mr.A.Gouthaman
For R1 : Mr.S.D.Ramalingam
For R2 to R6 : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 03.07.2014 made in C.M.P.No.1396 of 2013 in A.S.SR.No.40409 of 2013 on the file of the Principal City Civil Court, Chennai.

2. The petitioner is sixth defendant, first respondent is plaintiff, respondents 2 to 4 are defendants 3 to 5, fifth respondent is the second defendant and sixth respondent is the seventh defendant in O.S.No.5389 of 1997 on the file of the V Assistant Judge, City Civil Court, Chennai. First respondent filed suit for arrears of rent, recovery of possession and permanent injunction against one Mani Naicker, the petitioner and respondents 2 to 6. By the judgment and decree dated 29.01.2009, the suit was decreed after contest. First respondent filed E.P.No.3207 of 2012 to execute the decree. The petitioner entered appearance in the E.P. on

18.09.2012 and participated in the execution proceedings. While so, the petitioner and respondents 5 and 6 filed an appeal in A.S.SR.No.40409 of 2013 along with C.M.P.No.1396 of 2013 to condone the delay of 1644 days in filing appeal.

3. According to the petitioner, their earlier advocate, who conducted suit did not inform the result of the suit. She came to know about the judgment and decree only when they received notice in the execution proceedings. She contacted her previous advocate, took back the case bundle and presented the appeal by engaging the present advocate.

4. First respondent filed counter affidavit and submitted that the petitioner has not stated when she received notice in the execution proceedings and when she contacted her previous advocate. Petitioner and respondents 6 and 7 are occupying the temple property without paying any rent and as per the decree, they are liable to pay damages for use and occupation to the tune of Rs.91,580/-. If the application is allowed, idol of the temple, which is minor will be put to loss.

5. The learned Judge considering the averments made in the affidavit, counter affidavit, the fact that the petitioner entered appearance in execution proceedings on 18.09.2012, presented appeal only on 03.09.2013 and has not properly explained the delay, dismissed the application.

6. Against the said order of dismissal dated 03.07.2014 made in C.M.P.No.1396 of 2013 in A.S.SR.No.40409 of 2013, the present Civil Revision Petition is filed by the petitioner/sixth defendant.

7. Heard the learned counsel for the petitioner as well as the first respondent and perused the materials available on record.

8. From the materials available on record, it is seen that the petitioner has received notice in the execution proceedings and entered appearance on 18.09.2012 and was regularly participating in the execution proceedings. But she presented the appeal only on 03.09.2013 along with the present application.

9. According to the petitioner, her previous advocate did not

inform about the judgment and decree dated 29.01.2009 made in O.S.No.5389 of 1997. She came to know about the decree, only when she received notice in the execution proceedings. Therefore, there was a delay of 1644 days in filing the appeal.

10. It is a well settled that application for condoning the delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the parties have given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits.

11. In the present case, the decree was passed after contest and it is the duty of the petitioner and other defendants to follow up the case with the advocate and find out the result. The petitioner was not vigilant enough to prosecute the case. The petitioner has not explained the delay between 18.09.2012 and 03.09.2013 and the reason given by the petitioner for condonation of delay is not a valid reason.

12. The learned Judge has considered all the above facts and dismissed the application by giving cogent and valid reason. There is no irregularity or illegality warranting interference with the order passed by the learned Judge dated 03.07.2014.

13. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

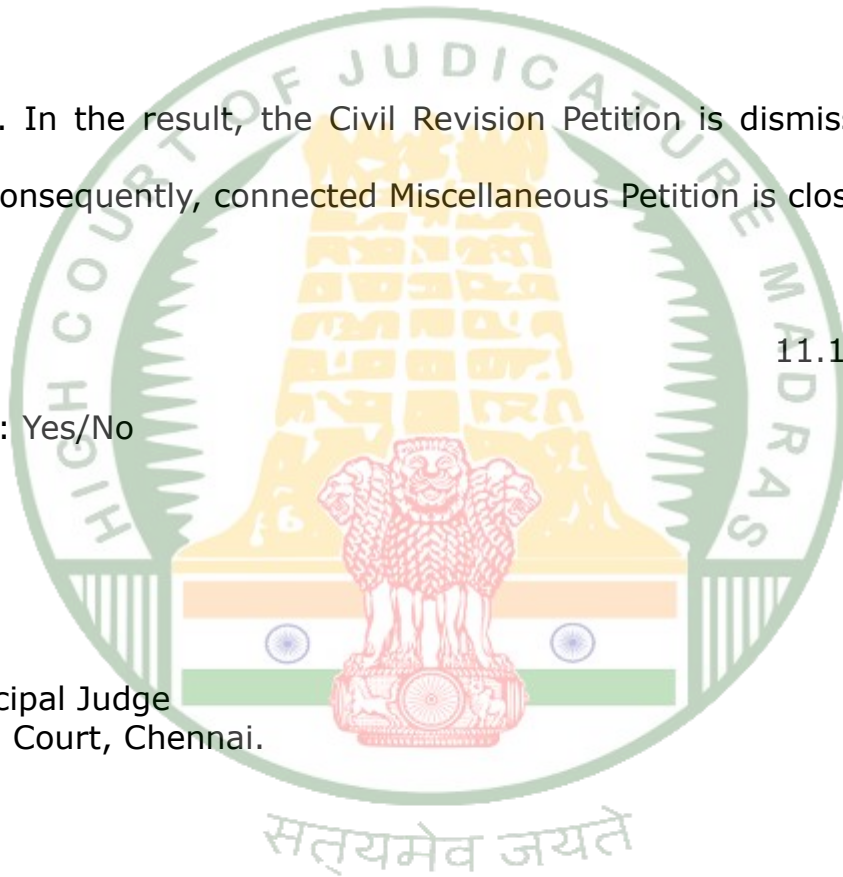
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Index : Yes/No

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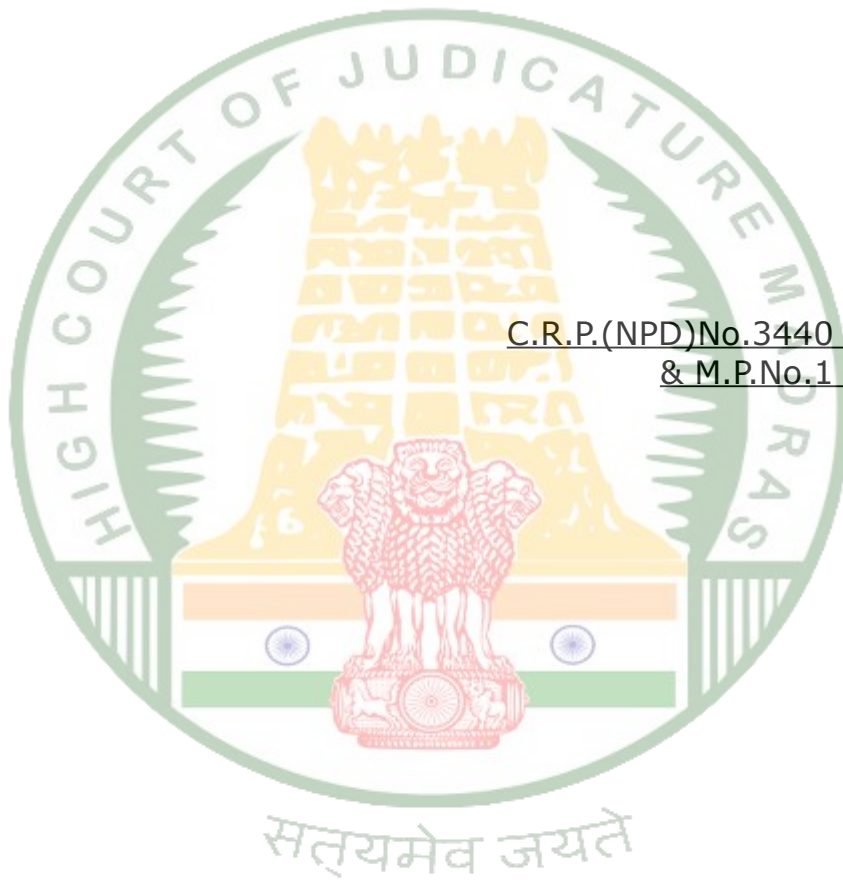
The Principal Judge
City Civil Court, Chennai.



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V.M.VELUMANI, J.

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