

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (NPD) Nos.3749 and 3750 of 2017

and

C.M.P. No.17443 of 2017

G.Vythi

...

Petitioner

Versus

D.Gopal

...

Respondent

PRAYER : Civil Revision Petitions filed under Section 115 of C.P.C. to set aside the common fair and decretal order dated 19.06.2017 passed in I.A. No.1888 of 2013 and I.A. No.1945 of 2016 in O.S. No.288 of 2007 on the file of the District Munsif of Ambattur, by allowing this Civil Revision Petition.

For petitioner : M/s.Elizabeth Ravi

For respondent : Mr.A.Palaniappan

COMMON ORDER

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These revisions arise against the common fair and decretal order dated 19.06.2017 passed in I.A. No.1888 of 2013 and I.A. No.1945 of 2016 in O.S. No.288 of 2007, by the District Munsif of Ambattur.

2. The learned counsel for the petitioner would submit that the petitioner has filed an application to condone the delay of 502 days, in filing the application to set aside the ex-parte decree. The said application was dismissed by the Trial Court, without appreciating the case of the petitioner. Therefore, the order passed by the court below is liable to be set aside.

3. Further it is submitted that the ex-parte judgment passed by the Court below is contrary to the decision of this Court in the case of ***M/s.Meenakshi Textiles represented by its Managing Director Versus M/s.Valliammal Textiles Ltd., Tiruppur in CDJ 2011 MHC 2388.***

4. The learned counsel for the respondent submitted that there is a huge delay of 502 days, in filing the petition to set aside ex-parte decree and that there is no proper explanation to condone the inordinate delay. On facts the delay is objected.

5. However, in the light of the aforesaid decision of this Court, the ex-parte judgment passed by the court below is not inconsonance with the provisions under Section 2(9) of the Civil Procedure Code. By considering the facts and circumstances of the case and in the light of the afore cited decision of this Court in the case of ***M/s.Meenakshi Textiles*** and the order passed by in

CRP (NPD) No. 1619 of 2017 dated 14.11.2017, this Court has no hesitation to set aside the order passed by the Court below. Considering the delay of 502 days, in fact, the Court below has allowed an application in O.S. No.287 of 2007 on payment of cost, in the connected suit, but dismissing the present application is erroneous in law. Therefore, this Court taking into consideration, all the above facts, is inclined to pass the following orders :-

1. The order passed in I.A.No. 1888 of 2013 is set aside, on payment of cost of Rs.7,500/- to the respondents, within ten days from the date of receipt of a copy of this order.
2. The Trial Court is directed to dispose of the suit, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.
3. On instructions, the learned counsel for both the parties, undertake to co-operate to dispose of the suit.
4. In the event of the petitioner, fails to comply with the conditional order, the Civil Revision petition will stand dismissed.

6. With the above observation, the C.R.P No. 3749 of 2017 stands allowed.

7. With regard to C.R.P No. 3750 of 2017, the revision petition is filed against the order passed in I.A. No.1945 of 2016, to set aside the ex-parte

decree passed on 10.09.2009 in the aforesaid suit. The said application has been dismissed, consequent to the order passed in I.A. No.1888 of 2013, ascending to the learned counsel for the respondent. If the petitioner complies with the conditional order passed in the CRP No.3749 of 2017, the delay would be condoned by the Court below and consequently, the I.A. No.1945 of 2016 would be taken on file and pass orders in the application. The learned counsel for the respondent further submitted that it would suffice, if a direction is given to the Court below to dispose of the suit, within a stipulated time.

8. In view of the order passed in C.R.P No.3749 of 2017, allowing the revision and setting aside the I.A. No. 1888/2013 subject to the conditional order being complied with, the C.R.P No. 3750 of 2017 is also allowed. Therefore, the common fair and decreetal order dated 19.06.2017 passed in I.A. No.1888 of 2013 and I.A. No.1945 of 2016 in O.S. No.288 of 2007 on the file of the District Munsif of Ambattur, is set aside and the Civil Revision Petition is allowed. The Trial Court shall dispose of the suit on merits, without being influenced by any observations made in the instant applications, as expeditiously as possible. Consequently, the connected Miscellaneous petitions are closed. No order as to costs.

15.11.2017

Index : Yes / No

Speaking/Non speaking

Note to office : Issue order copy next week

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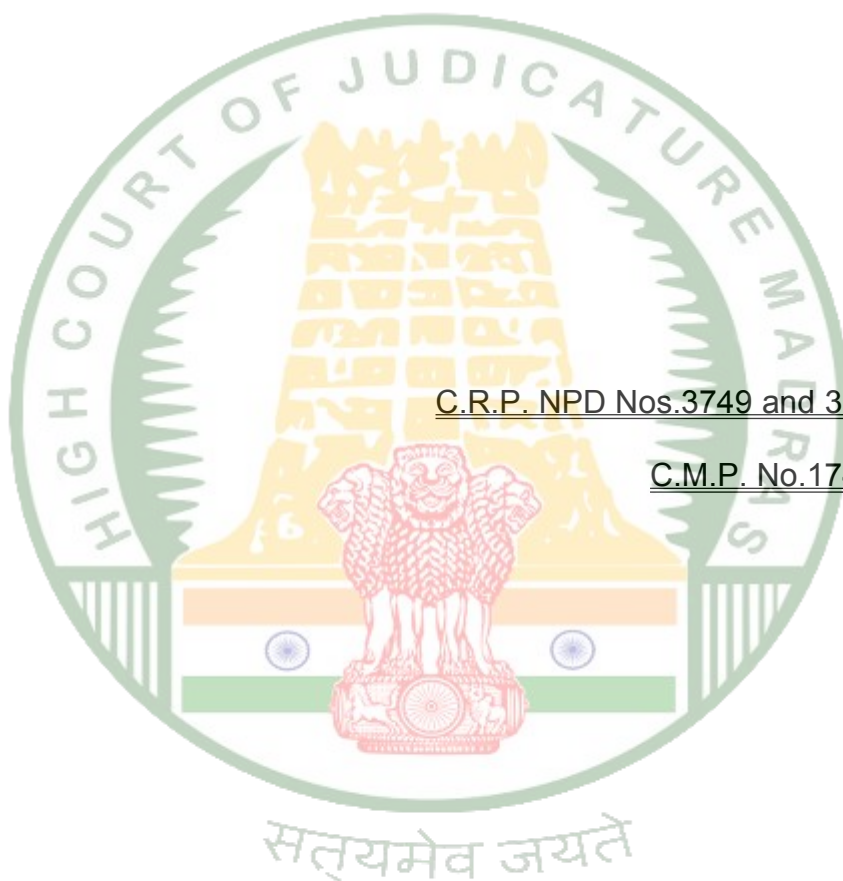
The District Munsif, Ambattur.



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D.KRISHNAKUMAR, J.

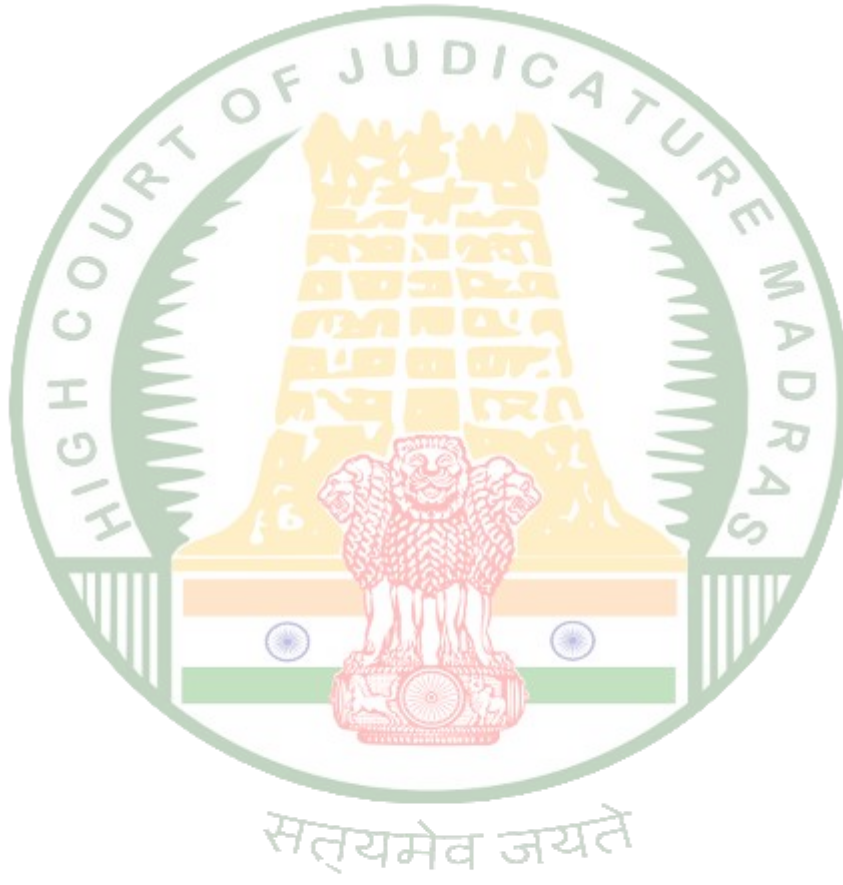
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