

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.(NPD).No.3870 of 2017
and CMP.No.18057 of 2017

Vijaya

..Petitioner

Vs.

Suresh

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 27.07.2017 and made in IA.No.2 of 2017 in IA.No.134 of 2016 in OS.No.24 of 2015 on the file of the Additional District Judge, Dharmapuri

For petitioner : Mr.C.Prabakaran

WEB COPY ORDER:

According to the petitioner, the respondent herein has filed a suit in OS.No.24 of 2015 against the revision petitioner before the District Judge at Dharmapuri, seeking for the relief of

specific performance of a contract based on the alleged agreement of sale dated 03.04.2014 in respect of the revision petitioner's property. In the aforesaid suit, the revision petitioner was set ex-parte on 05.10.2015. Pursuant to that, the revision petitioner has filed an application in IA.No.134 of 2016 seeking to condone the delay of 209 days in filing an application to set aside the ex-parte decree. The petitioner was suffered from illness and the counsel did not appear before the court in the month of June 2016. Hence, the said application was dismissed for default on 12.07.2016. Against the said order, the instant application has been filed to condone the delay of 125 days in filing an application for restoration of the application in IA.No.134 of 2016. The said application was dismissed. Therefore the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The matter has been posted on 22.11.2017 to serve notice to the respondent. On that day, the learned counsel for the petitioner represented that proof of service has been filed in the Registry. Therefore, the case was posted on 24.11.2017 and against posted on 07.12.2017, but none appeared for the respondent. Then, posted today. Today also, none appeared for the respondent.

3. In view of the submissions made by the learned counsel for the petitioner and on perusal of the available records, it is seen that the ex-parte decree was passed on 05.10.2015. The application in IA.No.134 of 2016 was filed to condone the delay of 209 days in filing an application to set aside the ex-parte decree. The said application was dismissed for default on 12.07.2016. Hence, the present application has been filed in IA.No.2 of 2017 to restore the said application. The reason as stated in the affidavit, the petitioner could not attend the court on the particular date due to illness and the counsel also not appeared before the court below. Therefore, the said application was dismissed.

4. Considering that the petitioner has specifically stated the reasons in the affidavit and the petitioner has filed the second application to condone the delay, the same shall be compensated by way of imposing heavy cost. Therefore, the order passed by the court below is liable to be set aside on condition that the petitioner has to pay cost.

5. In the result, the impugned order passed in IA.No.2 of 2017 is set aside on condition that the petitioner shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) payable to the Tamil

Nadu Mediation and Conciliation Centre, High Court of Madras within a period of one week from today. Consequently, the connected miscellaneous petition is closed.

6. For reporting compliance, post on 22.12.2017.

Speaking / Non Speaking order

Index :Yes/No

Internet :Yes/No

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Note: Issue order copy on 14.12.2017

12.12.2017



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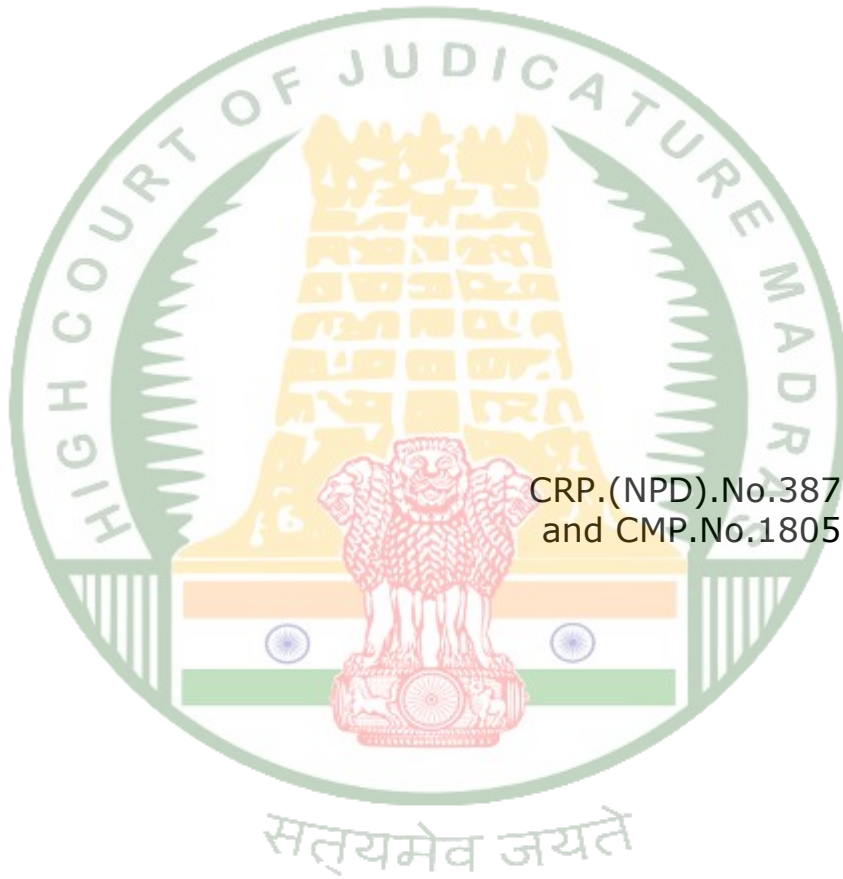
To
The Additional District Judge,
Dharmapuri



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D.KRISHNAKUMAR.J,

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