

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3896 of 2014
& M.P.No.1 of 2014

1.Karuppuudayar
2.Alagavel

.. Petitioners

Vs.

1.Virudhambal
2.Udaiyakumar

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 22.07.2014 made in I.A.No.145 of 2013 in O.S.No.108 of 2000 on the file of Subordinate Court, Attur.

For Petitioners : Mr.Vediappan

For Respondents : Mr.E.Kannadasan

ORDER

This Civil Revision Petition has been filed against the order and decretal order dated 22.07.2014 made in I.A.No.145 of 2013 in

O.S.No.108 of 2000 on the file of Subordinate Court, Attur.

2. The petitioners are the defendants and respondents are the plaintiffs in O.S.No.108 of 2000. The respondents filed the suit for specific performance. The petitioners entered appearance and filed written statement on 17.12.2002. Subsequently, the petitioners did not appear and contest the suit and hence, they were set ex-parte and ex-parte decree was also passed on 05.03.2007.

3. The petitioners filed an application to set aside the ex-parte decree on 05.04.2007 and the same was returned on 11.04.2007, which was re-presented by the petitioners on 04.06.2007. Again the said application was returned on 07.06.2007.

4. After taking the returns, the bundles got mixed up with other bundle and therefore, petitioners could not re-present the same. Only when the petitioners received the notice in the execution petition REP.82/2012, they have traced out the said petition and affidavit and re-presented the same along with the present application to condone the delay of 2006 days in filing

application to set aside the ex-parte decree.

5. The respondents filed counter and submitted that the petitioners have not given any cogent reason for the delay of 2006 days.

6. The learned Judge, considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application holding that the petitioners have not given any valid and acceptable reasons for condoning the delay.

7. Against the order of dismissal dated 22.07.2014 made in I.A.No.145 of 2013, the present civil revision petition is filed by the petitioners.

8. Heard the learned counsel appearing for the petitioners and respondents and perused the materials available on record.

9. From a reading of the materials available on record, it is seen that the petitioners were set ex-parte and ex-parte decree was

also passed on 05.03.2007. The petitioners filed application to set aside the ex-parte decree on 05.04.2007 and the same was returned on 11.04.2017. The said application was re-presented on 04.06.2007 and subsequently, it was re-presented and it was returned on 07.06.2007 and thereafter they have misplaced the bundle which got mixed up with the other bundle and could not re-present it in time. This contention was not acceptable and not a valid reason. The petitioners were not vigilant enough to prosecute the case for 2006 days and they did not take any steps to get the ex-parte decree set aside. It is well settled that the length of delay is not criteria, but the intention of the delay should not be malafide and the petitioners have come out with the application only when the notice in execution petition REP.82/2012 was served on them. This clearly shows the petitioners' intention to drag on the proceedings. In view of the above reasons, the civil revision petition is not maintainable and it has to be dismissed as devoid of merits.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

29.06.2017

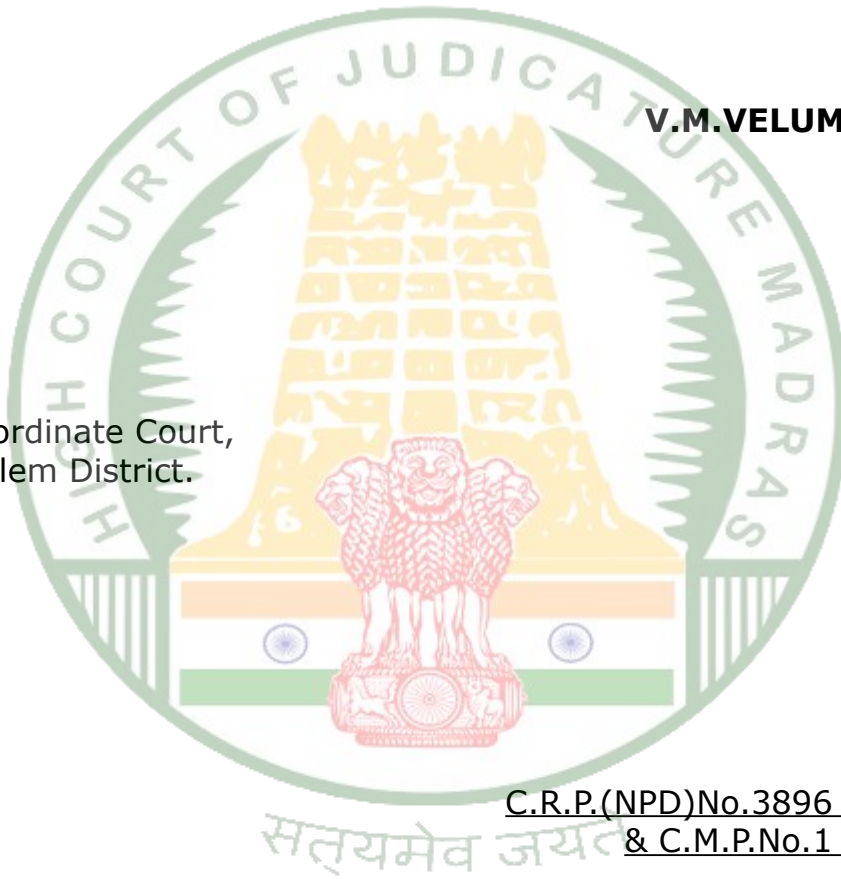
Index : Yes/No

dm/jv

V.M.VELUMANI, J.

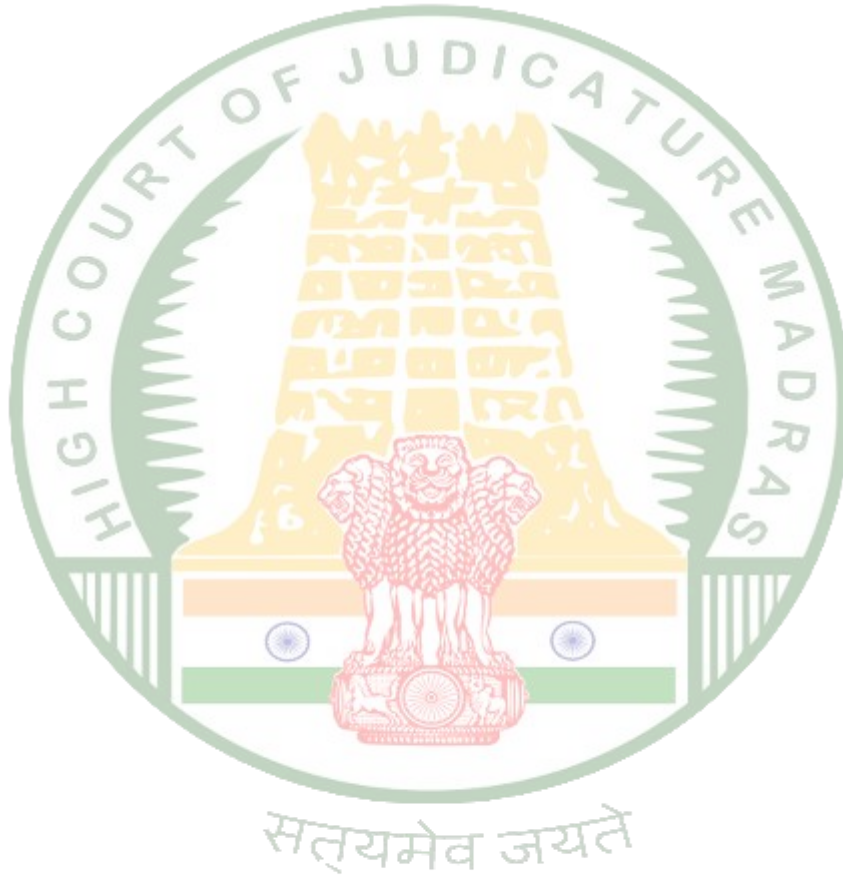
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To

The Subordinate Court,
Attur, Salem District.C.R.P.(NPD)No.3896 of 2014
& C.M.P.No.1 of 2014

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