

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4089 of 2014
and M.P.No.1 of 2014

The Government Employees Welfare
Association,
represented by its president
K.M.Devaraj
(ii) by its secretary P.Ganesan
Having its office at No.43/274,
Kadlamegam Street,
Thiruvallur Town and Taluk & District.

.. Petitioner

Vs.

1.B.Govindaraj

2. The Managing Trustee
Sudarsanam Educational and
Charitable Trust, represented by its
President, Managing Trustee
Amarath, s/o. Sudarsanam
Having office at No.11/5,
1st East Street Road,
Shenoy Nagar, Chennai – 600 030.

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the
Constitution of India, against the fair and decretal order dated
21.01.2014 made in I.A.No.389 of 2011 in unnumbered O.S.No. of

2011(S.R.No. 4233/2011) on the file of the Principal District Court, Thiruvallur (now suit numbered as O.S.No.27 of 2014 and transferred to III Additional District Court, Poonamallee).

For Petitioner : Mr.R.Rajesh
For R1 : Mr.R.Selvakumar
For R2 : Mr.M.V.Seshachari

ORDER

Civil Revision Petition is filed against the fair and decretal order dated 21.01.2014 made in I.A.No.389 of 2011 in unnumbered O.S.No. of 2011(S.R.No. 4233/2011) on the file of the Principal District Court, Thiruvallur (now the suit is numbered as O.S.No.27 of 2014 and transferred to III Additional District Court, Poonamallee).

2. The Petitioner is first defendant, first respondent is plaintiff and second respondent is second defendant in unnumbered O.S.SR.No.4233 of 2011 on the file of the Principal District Court, Thiruvallur, (now the suit is numbered as O.S.No.27 of 2014 on the file of the III Additional District Court, Poonamallee). The first respondent filed above suit for specific performance of the agreement of sale dated 04.11.2004. The first respondent filed the

said suit with deficit Court fee on the ground that the Court fee stamp papers to the tune of Rs.17,00,000/- was not available at the time of filing of the suit. According to the first respondent, along with the plaint, he filed an application under section 149 C.P.C. for extension of time to pay the deficit Court fee. The said application was returned for certain compliances. Subsequently, he paid entire Court fee on 04.07.2011. The first respondent filed the application in I.A.No.389 of 2011 to condone the delay of 91 days in representing the application filed by him under section 149 C.P.C. for extension of time for payment of deficit Court fee on the ground that the first respondent by inadvertence failed to represent the said application.

3. The petitioner and second respondent filed separate counter affidavits and opposed the application filed by the first respondent. According to the petitioner and second respondent, the first respondent has not given valid reason for not paying the Court fee along with the plaint. The delay in representing the application is due to reckless attitude of the first respondent and the delay cannot be condoned.

4. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, allowed I.A.No.389 of 2011 and granted extension of time for payment of Court fee on the ground that the first respondent paid Court fee of Rs.17,00,000/- at later stage.

5. Against the said order dated 21.01.2014 made in I.A.No.389 of 2011, the present Civil Revision Petition is filed by the petitioner/first defendant.

6. The learned counsel appearing for the petitioner submitted that the learned Judge has allowed the application for extension of time for payment of Court fee, while allowing the application to condone the delay in representing the application filed under Section 149 of C.P.C. for extension of time. The learned Judge failed to see that the first respondent has paid the Court fee of Rs.17,00,000/- only after six months from the date of filing of the suit. Presenting the plaint with deficit Court fee is not proper presentation. The learned judge considering the application for condoning the delay in representing the application for extension of

time, has ordered application for extension of time, even without numbering the application for extension of time.

7. Per contra, the learned counsel appearing for the first respondent submitted that the learned Judge has taken note of the fact that the first respondent has already paid deficit Court fee and the delay in representing the application is by inadvertence and has given valid reason for granting extension of time .

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

9. The first respondent has filed suit for specific performance of agreement sale on 21.07.2010. According to the first respondent, he presented the plaint with deficit Court fee on the ground that Court fee stamp papers were not available to the tune of Rs.17,00,000/- at the time of filing of the suit. The first respondent has filed application under section 149 C.P.C. for extension of time for payment of deficit Court fee. The said application was returned on 01.11.2010 for rectification of certain defects. The first respondent paid deficit Court fee on 04.07.2011

without obtaining extension of time. Subsequently, on 10.08.2011, the first respondent filed I.A.No.389 of 2011 to condone the delay of 91 days in representing the application for extension of time to pay the Court fee. Even though the petitioner and the second respondent opposed the said application, the learned judge by order dated 21.01.2014 allowed the application for condonation of delay in the interest of justice. At the same time, the learned Judge extended time for payment of Court fee without numbering the application for extension of time.

10. In view of the above facts, the learned Judge has committed grave irregularity in extending the time for payment of Court fee without even numbering the application for extension of time for payment of Court fee and without hearing the petitioner and second respondent. In view of such irregularity, impugned order of the learned Judge is set aside only with regard to portion of the order in extending the time for payment of Court fee.

11. The learned Judge is directed to number the application for extension of time, if it is otherwise in order and consider the said application on merits after giving opportunity to the parties to put

forth their case and pass orders on merits and in accordance with law. In view of the fact that the plaint was presented on 21.07.2010, the learned Judge is directed to dispose the application within a period of one month from the date of receipt of a copy of this order.

12. In the result, the Civil Revision Petition is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.10.2017

Index : Yes/No
kj/msrm

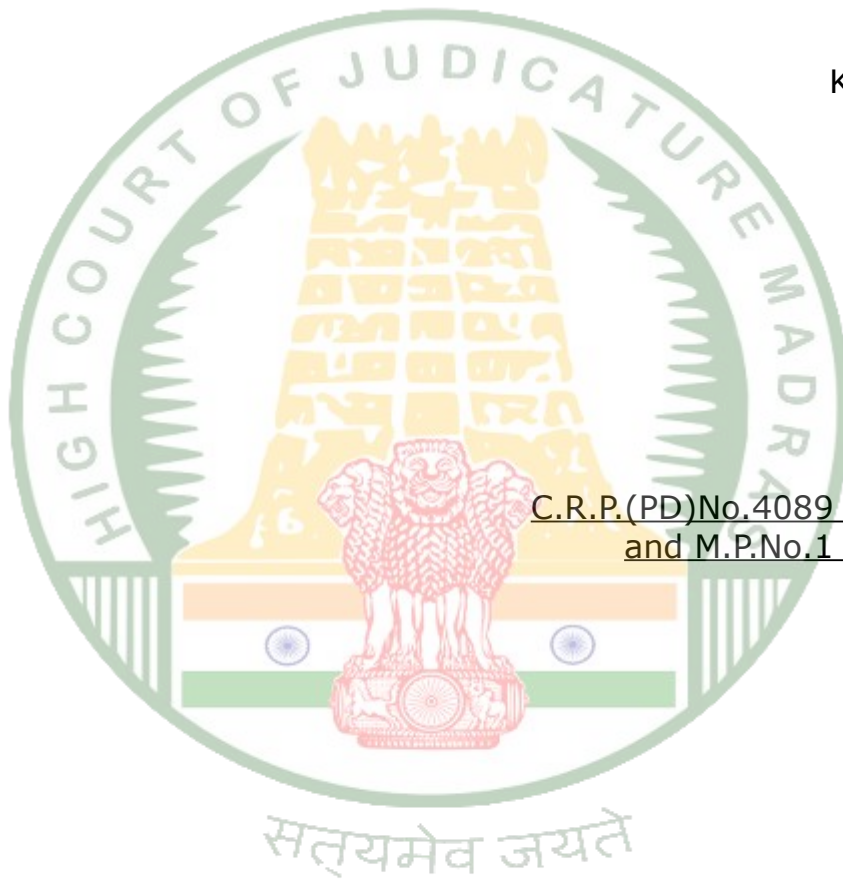
To

III Additional District Judge, Poonamallee.

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V.M.VELUMANI,J.

Kj/msrm



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