

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2017

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

CRP.(PD).No.4543 of 2017
and CMP.No.21417 of 2017

P.Arunmaichandran

..Petitioner

Vs.

P.Rajasekar

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 17.08.2017 made in I.A.No.11635 of 2016 in O.S.No.1760 of 2014 passed by the Hon'ble III Assistant City Civil Court, Chennai.

For petitioner : Mr.P.Ranganatha Reddy

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ORDER

According to the revision petitioner, the respondent has filed a suit in OS.No.1760 of 2014 for declaration. In the aforesaid suit, the respondent has also filed an application in IA.No.5122 of

2014 for interim injunction and the same was allowed. Challenging the said order, the revision petitioner has filed an appeal in CMA.No.15 of 2015. The Appellate court dismissed the said appeal and directed the trial court to dispose of the suit within two weeks. As against the said order, the revision petitioner has filed a Civil Revision Petition before this Court in CRP.No.4138 of 2015. This Court by order dated 15.12.2015, has directed the trial court to dispose of the said suit within the period of three months from the date of receipt of a copy of this Order after giving opportunity to the parties concerned. When the matter was taken up for trial, for one reason or other, the matter was adjourned on the earlier occasions. On 16.08.2016, the suit was dismissed for default. Thereafter, the respondent has filed the present application in IA.No.11635 of 2016 to restore the above suit, which has been allowed by the court below. Hence, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioner would submit that in the instant application, the revision petitioner has filed a detailed counter affidavit by objecting to allow the said application on the ground that the respondent / plaintiff has intentionally, drag on the proceedings. The revision petitioner has

further stated that this Court has already directed the trial court to dispose of the suit within three months. Pursuant to that, when the matter was taken up for trial, the respondent has intentionally dragged on the proceedings by not appearing before the court on the hearing dates. The trial has proceeded even after the stipulated time of three months, thereafter, the suit has been dismissed for default. Now, the respondent has filed the present application to restore the suit. Without considering the above contentions of the revision petitioner, the trial court has erroneously allowed the instant application. Hence, the revision petitioner has filed the present Civil Revision Petition before this Court.

3. Heard, the learned counsel for the revision petitioner and perused the materials available on record.

4. On perusal of the impugned order, it is observed that the respondent has specifically submitted that the respondent was suffering from brain cancer and he has been taking treatment for the brain cancer and that on 16.08.2016, and consequently he was unable to appear before the court for trial. By considering the above reasons stated by the respondent, the court below has rightly allowed the application on payment of cost.

5. It is useful to extract the decision of the Hon'ble Supreme Court in the case of ***Esha Bhattacharjee v. Raghunathpur Nafar Academy***, reported in **(2013) 12 SCC 649**, wherein at paragraph Nos.23 and 24, it is held as follows:

“23. We may also usefully refer to the recent decision of this Court in Esha Bhattacharjee [Esha Bhattacharjee v. Raghunathpur Nafar Academy, reported in (2013) 12 SCC 649], where several principles were culled out to be kept in Principles (iv), (v), (viii), (ix) and (x) of para 21 can be usefully referred to, which read as under: (SCC pp.658-59)

“21.4(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weight the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should

be vigilant not to expose the other side unnecessarily to face such a litigation.

24. When we apply those principles to the case on hand, it has to be stated that the failure of the Respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bonafides as displayed on the part of the Respondents. Further, when the Respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, the reasons which prevented the Respondents from not paying the Court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bonafides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by

allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, Courts are required to weigh the scale of balance of justice in respect of both parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the Respondents not deserving any indulgence by the Court in the matter of condonation of delay. The Respondents had filed the suit for specific performance and when the trial Court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the Respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals

registered.”

6. In the light of the aforesaid decision of the Hon'ble Supreme Court, considering the facts of the present case, the order passed by the court below is perfectly valid. Therefore, there is no infirmity or illegality in the order passed by the court below. Hence, the Civil Revision Petition is liable to be dismissed.

7. At this stage, the learned counsel for the revision petitioner would request that this Court may direct the trial court to dispose of the said suit within the time frame as may fixed by this Court and also the respondent would cooperate with disposal of the suit without seeking adjournment.

8. On the request of the learned counsel for the revision petitioner, this Court is inclined to direct the III Assistant City Civil Court, Chennai to dispose of the suit in OS.No.1760 of 2014 within the period of three months from the date of receipt of a copy of this Order.

9. In the result, the Civil Revision Petition is dismissed with above observations. Consequently, the connected

miscellaneous petition is closed. No costs.

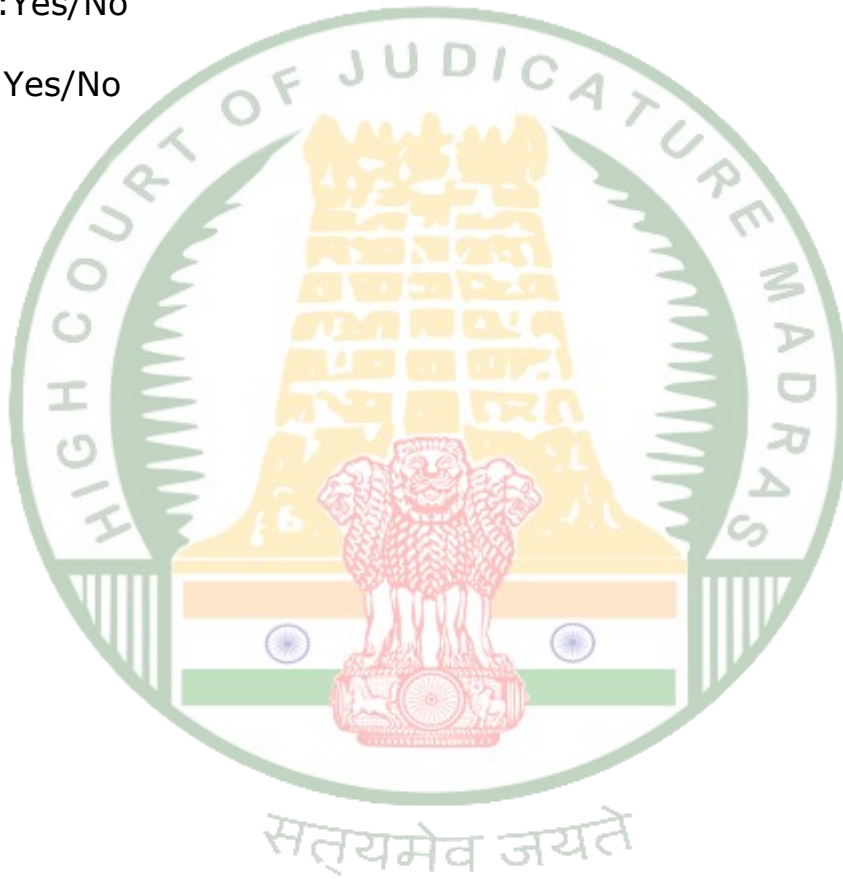
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Speaking/Non-speaking order

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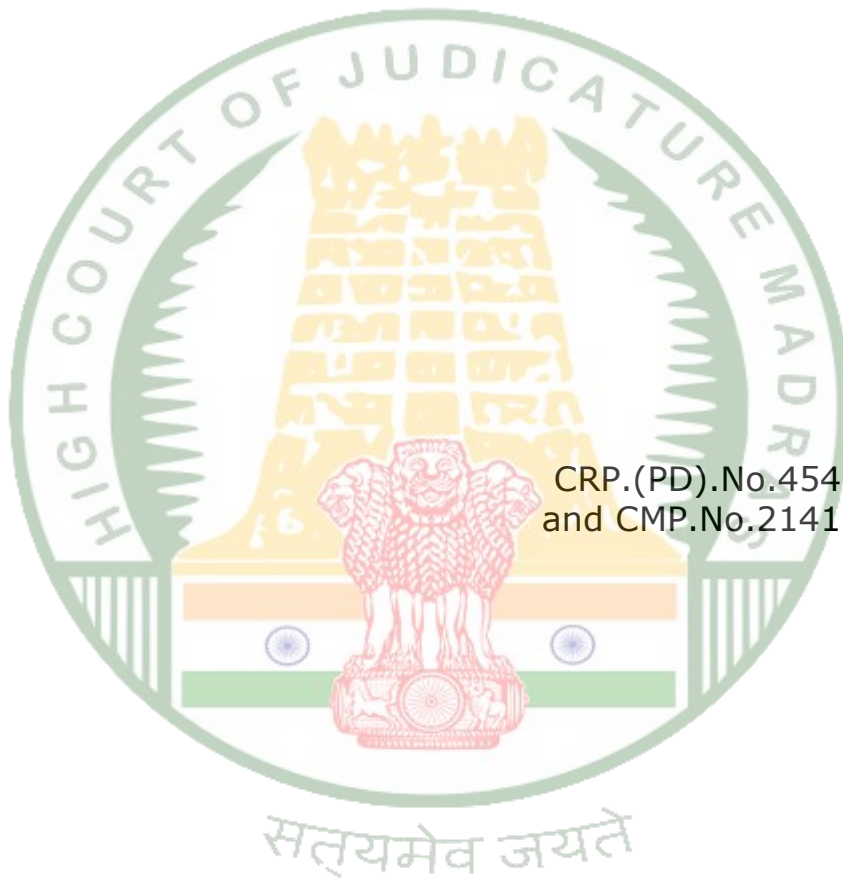
The III Assistant City Civil Court,
Chennai.



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D.KRISHNAKUMAR.J,

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