

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4136 of 2014
& M.P.No.1 of 2014

1.Stalin
2.Jayaraj
3.Periyanayagam
4.Anthonysamy
5.Alferdoss
6.Ramalingam

.. Petitioners

Vs.

Ganesan

.. Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 13.08.2014 made in I.A.No.187 of 2012 in O.S.No.3 of 2005 on the file of the District Munsif cum Judicial Magistrate's Court, Nannilam.

For Petitioners : M/s.R.T.Shyamala

For Respondent : Mr.S.Sounthar

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 13.08.2014 made in I.A.No.187 of 2012 in O.S.No.3 of

2005 on the file of the District Munsif cum Judicial Magistrate's Court, Nannilam.

2. The petitioners are the defendants 1, 3 to 7 and respondent is the plaintiff in O.S.No.3 of 2005 on the file of the District Munsif cum Judicial Magistrate's Court, Nannilam. The respondent filed the above suit for damages and recovery of money. The petitioners along with the second defendant entered appearance through advocate and filed written statement on 12.06.2005. Subsequently, they did not contest the suit and the petitioners were set exparte on 25.07.2008. The respondent filed E.P.No.1 of 2012 on the file of the District Munsif cum Judicial Magistrate's Court, Nannilam, to direct the petitioners to pay the decretal amount, failing which, to arrest and detain them in civil prison. On receipt of notice in execution petition, the petitioners entered appearance through Advocate and filed I.A.No.187 of 2012 to condone the delay of 1333 days in filing the petition to set aside the exparte decree.

3. According to the petitioners, their community people appointed the second defendant/Shanmugam as their

representative to contest the suit. Subsequently, the said Shanmugam/second defendant converted to Islam, left the village and his whereabouts are not known to the petitioners. The petitioners came to know about the exparte decree only when they received notice in E.P.No.1 of 2012 and filed the present application in I.A.No.187 of 2012 to condone the delay of 1333 days in filing the petition to set aside the exparte decree.

4. The respondent filed counter affidavit and denied all the averments made in the said application and submitted that the reasons given by the petitioners are not valid reasons and only to drag on the proceedings, they have come out with the present application and prayed for dismissal of the application.

5. Before the learned Judge, the third petitioner examined himself as P.W.1 and respondent examined himself as R.W.1. Both the petitioners and respondent have not marked any documents.

6. The learned Judge, considering all the averments made in the affidavit, counter affidavit, oral evidence and materials available on record, dismissed the application holding that the petitioners

have not given valid and sufficient reason to condone the delay in filing the petition to set aside the exparte decree.

7. Against the said order of dismissal dated 13.08.2014 made in I.A.No.187 of 2012, the present Civil Revision Petition is filed by the petitioners.

8. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

9. The learned counsel for the petitioners reiterated the averments made in the affidavit, contentions raised in the grounds of revision and submitted that the suit was dismissed for default on 03.01.2007. Subsequently, the suit was restored on 16.03.2007, after restoration, no notice was issued to the petitioners and their counsel reported no instructions in I.A.No.136 of 2007 filed by the respondent for appointment of Advocate Commissioner. Notice was issued only in the said I.A. and not in the suit. The written statement filed by the defendants 1 to 4 and 6, which was adopted by the defendants 5 and 7 will not amount to all the petitioners were aware of the suit proceedings.

10. The learned counsel appearing for the petitioners further submitted that the petitioners are illiterate and are coolie workers. The petitioners are willing to deposit entire decree amount within a period of six weeks from the date of receipt of a copy of this order and an opportunity may be given to the petitioners to put fourth their case on merits.

11. It is a well settled that application for condoning the delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the parties have given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits.

12. In the present case, according to the petitioners, they appointed the second defendant as their representative to conduct the suit, subsequently he converted to Islam, left the village and the petitioners were not aware of the same.

13. Considering the above facts and submissions of the learned counsel for the petitioners that the petitioners are willing to deposit the entire decree amount within a period of six weeks, the Civil Revision Petition is allowed directing the petitioners to deposit a sum of Rs.55,569/- within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the respondent is permitted to withdraw a sum of Rs.15,000/-. The learned Judge is directed to consider the application filed to set aside the exparte decree and proceed the suit further. The learned Judge is also directed to dispose of the suit within two months thereafter. If the petitioners failed to deposit the amount within six weeks from the date of receipt of a copy of this order, the Civil Revision Petition will stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

20.11.2017

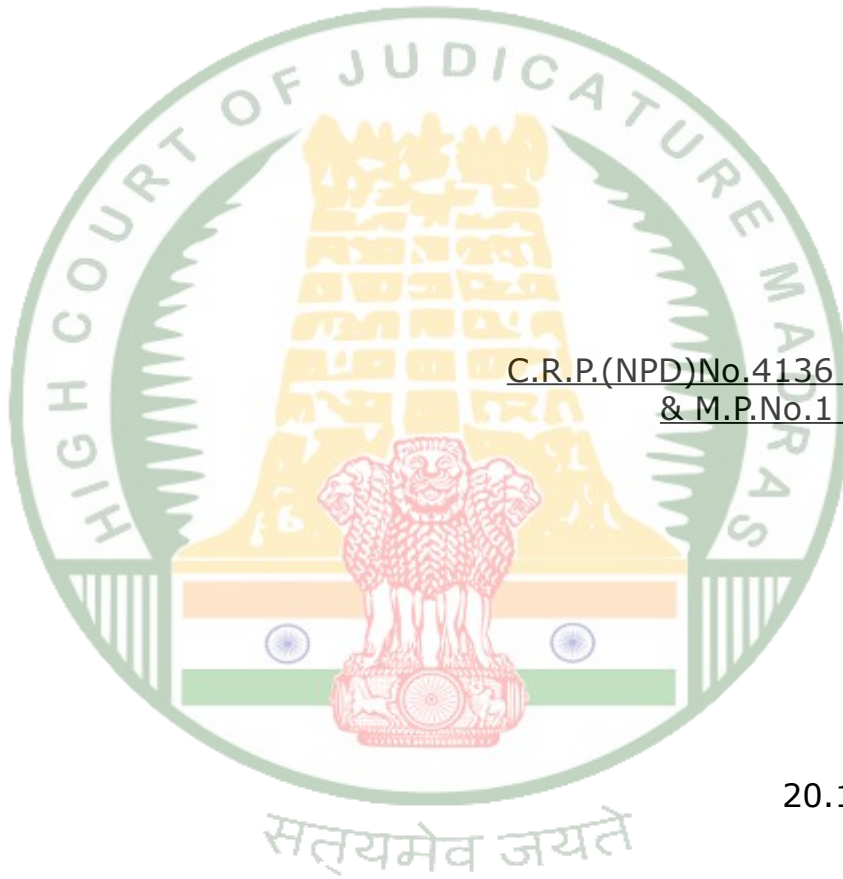
Index : Yes/No
dm/kj

To

The District Munsif cum Judicial Magistrate,
Nannilam.

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V.M.VELUMANI, J.
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