

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2017

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.754 of 2017
and CMP.Nos.3717 & 4364 of 2017

S.Kumarudeen

.. Petitioner

Vs.

Pasumai Poonga Welfare Association,
Rep. by Chandran, S/o.Muthaiya
SSL Green Park Apartment
G-14, Block II
3/569, Kundrathur Main Road,
Madanandapuram, Mugalivakkam,
Chennai - 600 125.

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree dated 15.12.2016 made in I.A.No.1339 of 2016 in I.A.No.1496 of 2015 in O.S.No.371 of 2015 on the file of the District Munsif cum Judicial Magistrate at Sriperumbudur and allow the above CRP

For Petitioner : Mr.Subramani,
Senior Counsel for Mr.M.Syed
Ibrahim
For Respondent : No appearance

ORDER

The Civil Revision Petition has been filed praying to set aside the order and decree dated 15.12.2016 made in I.A.No.1339 of 2016 in I.A.No.1496 of 2015 in O.S.No.371 of 2015 on the file of the District Munsif cum Judicial Magistrate at Sriperumbudur.

2. The petitioner is the defendant and respondent is the plaintiff. The respondent filed a suit in O.S.No.371 of 2015 on the file of the District Munsif-cum-Judicial Magistrate Court, Sriperambudur for permanent injunction restraining the petitioner from constructing the compound wall in the suit property. The respondent filed an application in I.A.No.1496 of 2015 for interim injunction. The petitioner was set ex-parte in both the suit as well as in I.A.1496 of 2016 and therefore, an ex-parte order was passed against him. The petitioner filed an application to set aside the exparte order passed in the suit and the said application was allowed. Thereafter, petitioner also filed an application in I.A.No.1339 of 2016 to set aside the exparte order passed in I.A.No.1496 of 2015, filed by the respondent.

3. It is seen that the said application in I.A.No.1339 of 2016 was posted on 06.12.2016. The said date was declared as a holiday. Subsequently, the trial Court had taken up the application in I.A.No.1339 of 2016 for hearing on 15.12.2016 and passed a conditional order directing the petitioner to pay a sum of Rs.500/- to the respondent towards costs on or before 22.12.2016, failing which the said order would stand dismissed, and further it was posted on 23.12.2016. The said order was not complied with by the petitioner and therefore, the trial Court, vide its order dated 05.01.2017 had allowed application in I.A.No.1496 of 2015, granting injunction to the respondent and accordingly, the application in I.A.No.1339 of 2016 stood dismissed.

4. Challenging the order of the trial Court dated 15.12.2016 made in I.A.No.1339 of 2016 in I.A.No.1496 of 2015 in O.S.No.371 of 2015, the petitioner has filed the Civil Revision Petition.

5. Heard the learned Senior counsel appearing for the petitioner and perused the materials on record.

6. Though notice was served on the respondent and name being printed in the cause-list, there is no representation for the respondent either in person or through counsel.

7. The learned Senior Counsel appearing for the petitioner contended that the said application in I.A.No.1339 of 2016 was posted on 06.12.2016. The said date was declared as a holiday and therefore he did not have the knowledge that next hearing date is on 15.12.2016. Later, when the petitioner was verifying the records to find out the next date of hearing, he came to know that a conditional order was passed by the trial Court on 15.12.2016. It is also submitted that the petitioner had failed to comply with the order of the trial Court in time as directed by the trial Court, only on the ground that he did not have the knowledge that the petition was posted for orders on 15.12.2016, and that a conditional order was passed by the trial Court in I.A.No.1339 of 2016. The learned Senior Counsel also submitted that the petitioner has filed an application seeking for extension of time for payment of cost to the respondent, but the same was dismissed.

8. Considering the submissions made by the learned Senior Counsel for the petitioner and in view of the fact that 06.02.2016 was declared as a holiday and the ex-parte order in the suit was set aside by the trial Court, this Court is of the view that the impugned order dated 15.12.2016 passed by the learned District Munsif- cum- Judicial Magistrate, Sriperumbudur, dismissing the application in I.A.No.1339 of 2016 is set aside, and accordingly the I.A.No.1339 of 2016 is restored to file. The petitioner is directed to pay the cost of Rs.500/- to the respondent within two weeks from date of receipt of a copy of the order.

9. With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

12.06.2017

ds

Speaking Order/Non Speaking Order

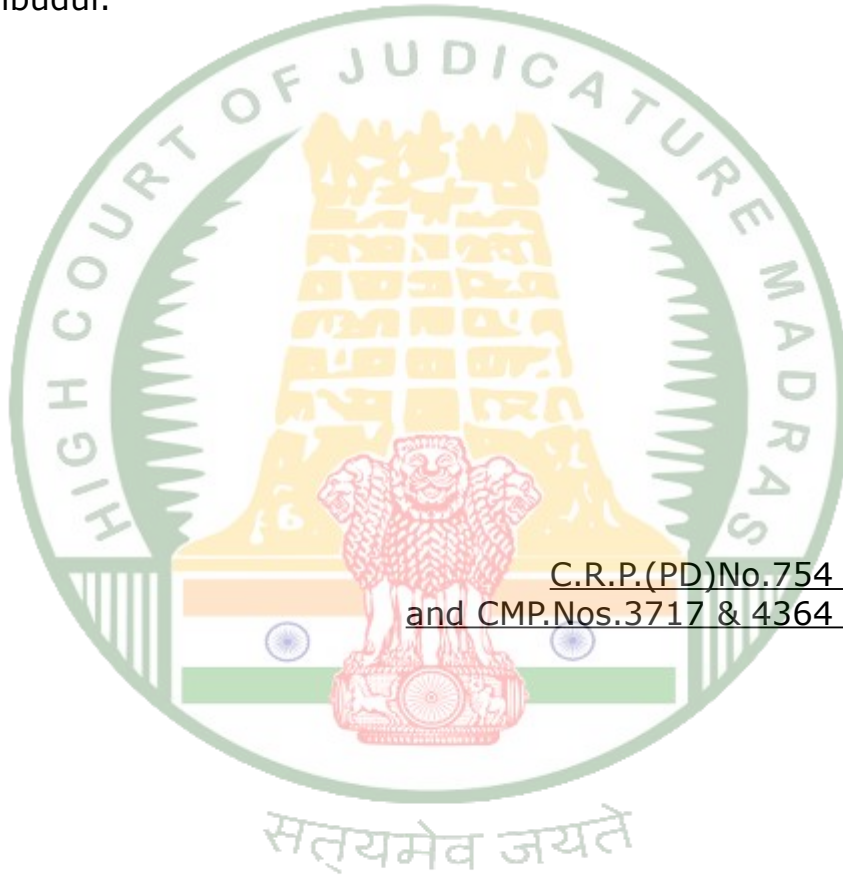
Index : Yes / No

Internet : Yes / No

V.M.VELUMANI,J.

ds

To
The District Munsif cum Judicial Magistrate
Sriperumbudur.



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