

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.171 of 2015
& M.P.No.1 of 2015

Mohammed Ibrahim

.. Petitioner

Vs.

Majid-Al-Ansar
Masjid represented by its President,
Rafique Ahamed,
Railway Guard, Office at Masjid-Al-Masjid,
Poondurai Road, near Kalaimattusilai,
Railway Colony, Erode -2.

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the order of the learned Principal District Munsif, Erode, dated 18.11.2014 made in I.A.No.779 of 2014 in O.S.No.425 of 2012.

For Petitioner : Mr.C.Munuswamy

For Respondent : Mr.V.Venkataseshan

ORDER

This Civil Revision Petition is filed to set aside the order of the learned Principal District Munsif, Erode, dated 18.11.2014 made in I.A.No.779 of 2014 in O.S.No.425 of 2012.

2.The petitioner is the first defendant and respondent is the plaintiff in O.S.No.425 of 2012 (formerly O.S.No.311 of 2011 on the file of the Principal Subordinate Court, Erode) on the file of the Principal District Munsif Court, Erode. The respondent filed the said suit against the petitioner and Tamil Nadu Wakf Board for recovery of possession and for arrears of rent. An exparte decree was passed on 22.04.2014. The petitioner filed I.A.No.779 of 2014 to condone the delay of 108 days in filing the petition to set aside the exparte decree dated 22.04.2014. According to the petitioner, he was suffering from illness and he could not contact his Advocate and give instructions to cross-examine PW1. The respondent filed counter affidavit and opposed the said application.

3.The learned Judge, considering the averments in the affidavit and counter affidavit, dismissed the application.

4.Against the said order dated 18.11.2014 made in I.A.No.779 of 2014 in O.S.No.425 of 2012, the present Civil Revision Petition is filed by the petitioner.

5.Heard the learned counsel for the petitioner as well as the

respondent and perused the materials available on record.

6. From the materials on record and the order of the learned Judge, it is seen that earlier, the petitioner was set exparte twice and exparte decrees were passed. On applications filed by the petitioner, the exparte decrees earlier passed were set aside. The respondent let in evidence as PW1 and marked documents. On number of occasions, there was no representation on behalf of the petitioner even after setting aside the exparte decree. On 17.03.2014, the learned Judge passed a specific order that "there was no representation for the petitioner till 2.00 p.m and to give one more chance, the matter was adjourned to 25.03.2014". On 09.04.2014, the counsel for the petitioner sought adjournment for cross-examination of PW1. At his request, the suit was adjourned to 16.04.2014. On 16.04.2014, there was no representation for petitioner till 1.30 p.m and the petitioner was set exparte on that day. The learned Judge posted the suit on 22.04.2014 for judgment to be pronounced and passed exparte decree on that day. The petitioner did not appear even though the suit was adjourned to 16.04.2014 at the request of the counsel for the petitioner and did not file any application to set aside exparte order dated 16.04.2014 when the suit was posted to 22.04.2014 for judgment. The

petitioner has come out with the present application only when the respondent filed E.P. to execute the decree. The learned Judge considered all these facts and the fact that on three occasions the petitioner was set exparte and on two occasions, exparte decrees were passed, dismissed the application.

7. From the above facts, it is clear that the intention of the petitioner is only to drag on the proceedings. Considering all these facts, I hold that there is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 18.11.2014 made in I.A.No.779 of 2014 in O.S.No.425 of 2012.

8. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

13.12.2017

Index: Yes/No

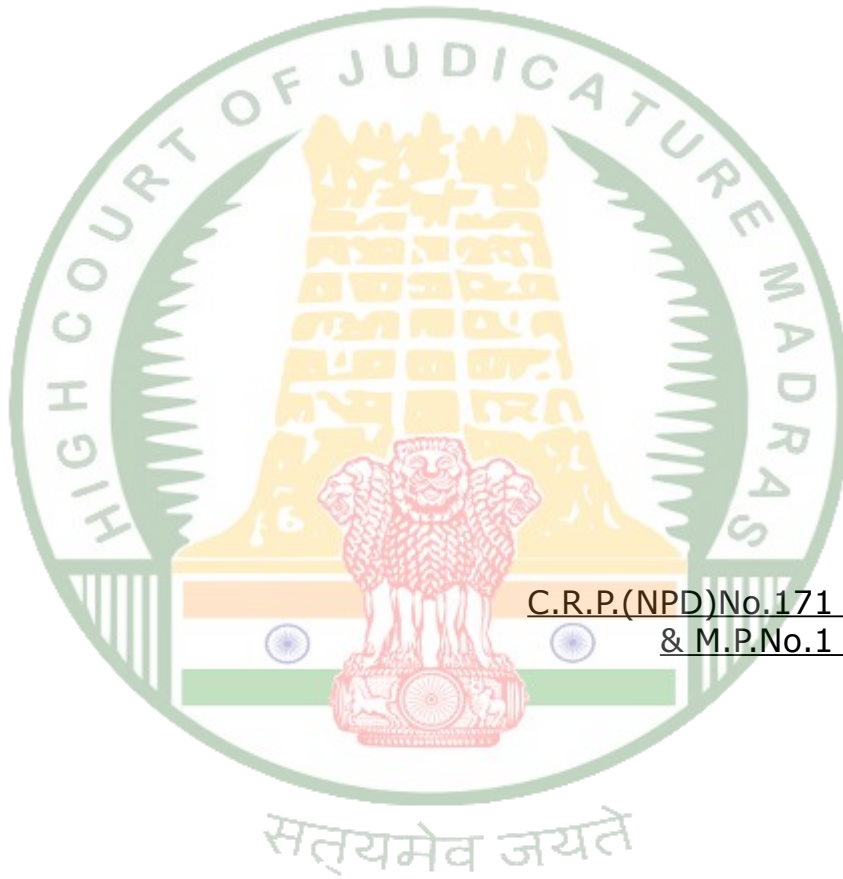
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To

The Principal District Munsif,
Erode.

V.M.VELUMANI,J.

gsa



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