

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.03.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (NPD)No.871OF 2017

Kolinjiappan

..Petitioner/Defendant

Versus

Marimuthu

S/o Karuppazhaki gounder
Kattu kottai, Vellaiyur village
Gangavalli Taluk, Salem District

..Respondent/Plaintiff

PRAYER: This Revision Petition is filed under Section 115 Civil Procedure Code against the dismissal order, dated 21.10.2016 of the District Munsif Court, Attur in I.A.No.234 of 2016 in O.S.No.333 of 2007.

For petitioner : Mr.T.Ganesan
For respondent : No Appearance

ORDER

According to the petitioner, the respondent has filed the suit for recovery of money in O.S.No.333 of 2007 based on a pronote, and the same was contested by the petitioner by denying his signature in the pronote. On 01.03.2011, the petitioner was called absent and set ex-parte and ex-parte decree was passed. On coming to know about the ex-parte decree, the petitioner has filed a petition to set aside the order and the said petition was returned on 18.03.2013, pointing out some defects. Thereafter, the petitioner has filed an application to condone the delay of 921 days in re-presenting the application to set aside ex-parte decree. The Court below without considering the reasons stated in the said affidavit filed in support of the petition has erroneously dismissed it. Aggrieved by the dismissal order of the Court below, the petitioner has filed the present Civil Revision Petition.

2. On perusal of the affidavit filed by the petitioner to condone the inordinate delay in filing the application, it is seen that an application filed to set aside the ex-parte decree was returned on 18.03.2013, due to some defects. Thereafter, the petitioner represented the said application to set aside the ex-

parte decree along with the application under Section 5 of the Limitation Act, to condone the delay of 921 days.

3. The Hon'ble Supreme Court in H.DOHIL CONSTRUCTIONS COMPANY PRIVATE LIMITED Vs. NAHAR EXPORTS LIMITED AND ANOTHER, reported in (2015) 1 SCC 680, has held as follows:

" 24. 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.

4. On the facts, it is seen that the respondent also filed the suit for recovery of money and the respondent filed the execution petition based on the ex-parte order. At this stage, the present application has been filed. The petitioner has not explained sufficient reasons for condoning the delay of 921 days in re-presentation and the reasons stated in the affidavit is not bonafide. Hence in the light of the decision of the Hon'ble Supreme Court, I am not inclined to interfere with the order passed by the trial Court.

5. The Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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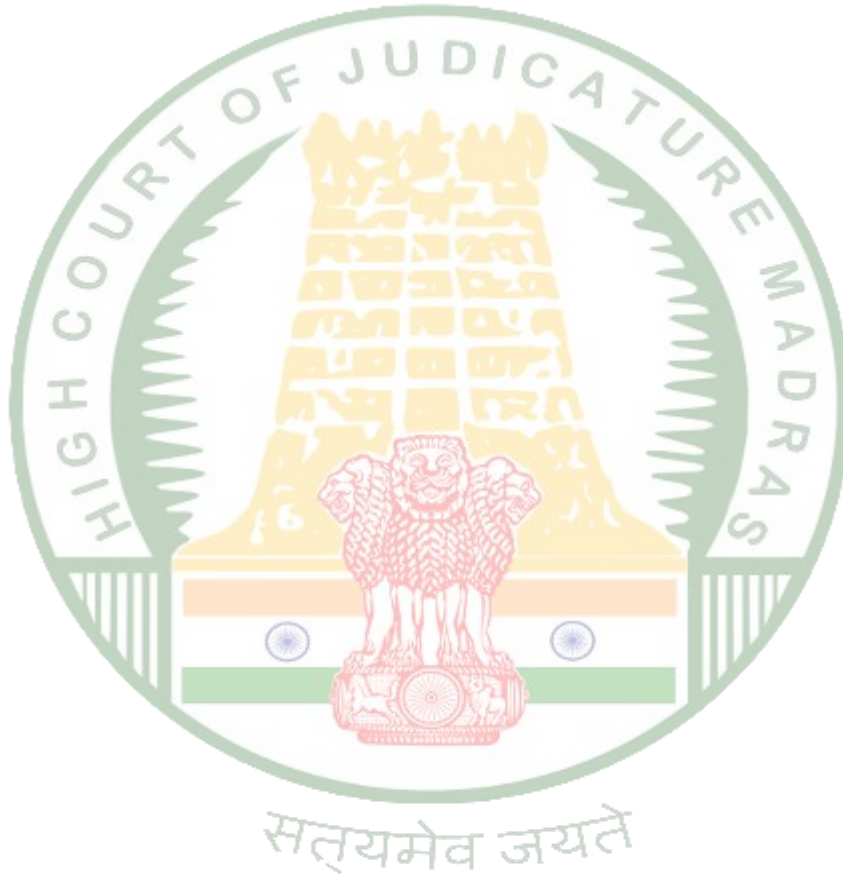
To

The District Munsif Court,
Attur.

+ 1 cc to Mr.T. Ganesan, Advocate Sr.16804

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NRI (CO)
EU 24.4.17



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