

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3770 of 2011
& M.P.No.1 of 2011

Somu

.. Petitioner

Vs.

1.Murugesan
2.Kumaravel
3.Gnanavel

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decretal order dated 29.03.2011 made in I.A.No.216 of 2009 in O.S.No.85 of 1999 on the file of the Subordinate Court, Harur.

For Petitioner : Mr.G.Arulmurugan
For Respondents : Mr.O.R.Mahesvaren
Mr.S.Babu

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 29.03.2011 made in I.A.No.216 of 2009 in O.S.No.85 of 1999 on the file of the Subordinate Court, Harur.

2. The petitioner is plaintiff and respondents are defendants in O.S.No.85 of 1999 on the file of the Subordinate Court, Dharmapuri. The petitioner filed said suit for specific performance on the agreement of sale dated 14.10.1998. The petitioner entered appearance, but did not file written statement. An exparte decree was passed on 14.11.2002. The respondents filed I.A.No.216 of 2009 to condone the delay of 2103 days in filing the application to set aside the exparte decree.

3. According to the respondents, they engaged one advocate by name Mr.K.N.Nanjundan and they were regularly contacting their advocate. The said advocate did not inform the respondents regarding not filing of written statement and passing of exparte decree. The respondents came to know about the exparte decree, when they received notice in the execution petition. They tried to contact their advocate and came to know the advocate Mr.K.N.Nanjundan died on 25.11.2005 and his daughter by name Nagalakshmi, who was handling the case, was selected as District Munsif. The respondents engaged another advocate and filed the present application. Thereafter, the first respondent was suffering from jaundice and he was bedridden for six months. Therefore,

there was a delay of 2103 days in filing the application to set aside the exparte decree. The petitioner filed counter affidavit and opposed the said application.

4. Before the learned Judge, the first respondent was examined as P.W.1 and petitioner was examined as R.W.1. Both the petitioner and respondents did not mark any documents.

5. The learned Judge considering the reasons given by the respondents and oral evidence of respondents, allowed the application on payment of costs of Rs.6,000/- payable to the petitioner by the respondents.

6. Against the order dated 29.03.2011 made in I.A.No.216 of 2009, the present Civil Revision Petition is filed by the petitioner/plaintiff.

7. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

8. The respondents have contended that the delay has been caused due to death of their earlier advocate and appointment of his daughter, who was handling the case thereafter, as District Munsif and they let in evidence to that effect. The petitioner has not disputed this contention.

9. According to the petitioner, the reason given by the respondents is not valid and they have not explained each and every day delay. Even after receiving notice in the execution petition, the respondents have not filed the present application in time.

10. From the materials available on record, it is seen that the exparte decree was passed on 14.11.2002 and petitioner has filed execution petition only in the year 2008 i.e. nearly after five years. The learned Judge considering the nature of relief sought for in the suit, death of earlier advocate of the respondents, appointment of his daughter, who was handling the case was selected as District Munsif and petitioner filed the execution petition only after five years of passing of exparte decree, allowed the application. However, the learned Judge has imposed costs of Rs.6,000/-

payable by the respondents to the petitioner. There is no reason to interfere with the order of the learned Judge in allowing the application.

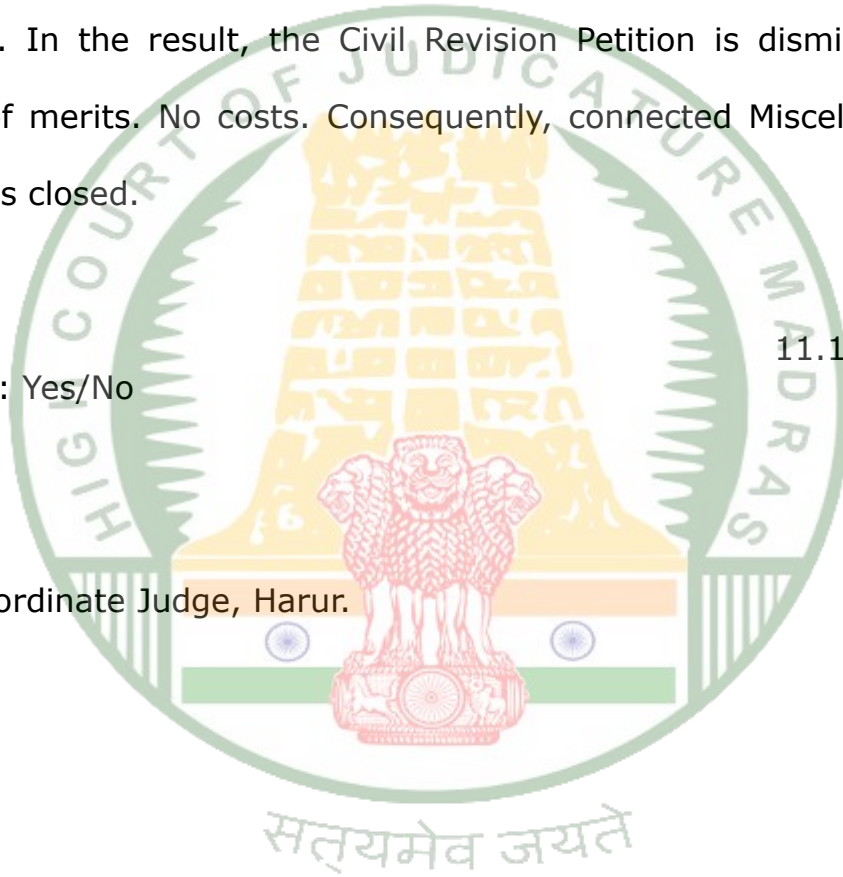
11. In the result, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
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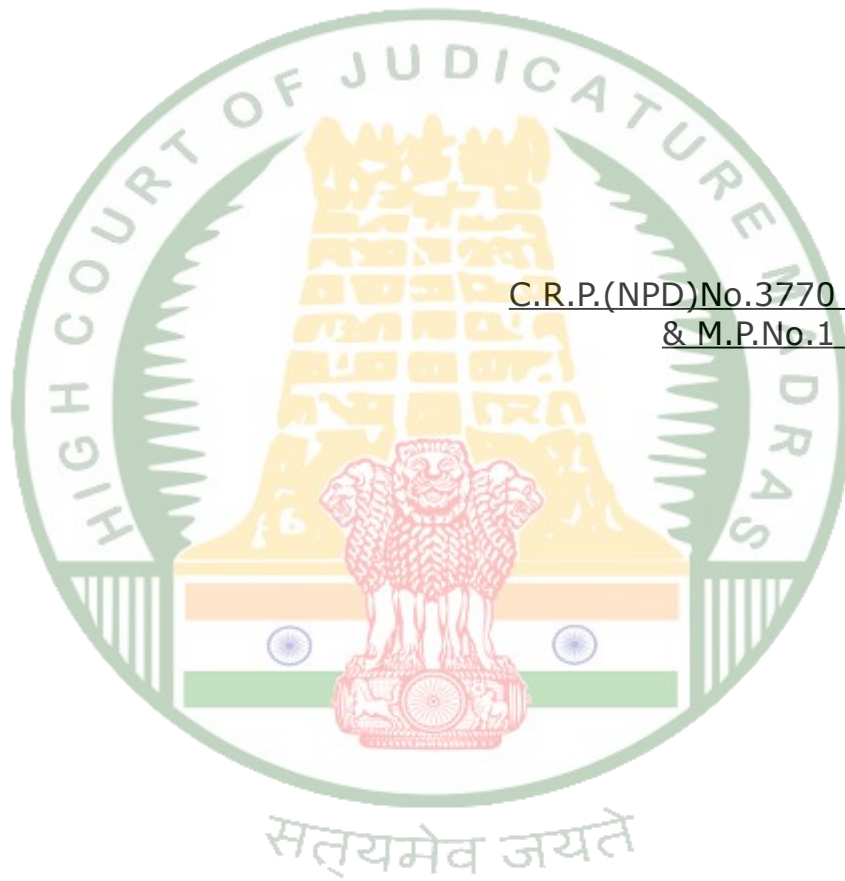
The Subordinate Judge, Harur.



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V.M.VELUMANI, J.

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