

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4833 of 2011
M.P.No.1 of 2011

T.Murugesan

.. Petitioner

Vs.

Nagesh

.. Respondent

PRAYER: Civil Revision Petition filed Under Section 115 of Civil Procedure Code, to set aside the dismissal Order and Decretal order dated 06.09.2011 made in I.A.No.229 of 2008 in O.S.No.37 of 2001 on the file of the Learned Sub Judge, Dharmapuri.

For Petitioner : Mr.D.Ramesh Kumar

For Respondent : Mr.D.Selvaraj

ORDER

This Civil Revision Petition has been filed to set aside the dismissal Order and Decretal order dated 06.09.2011 made in I.A.No.229 of 2008 in O.S.No.37 of 2001 on the file of the Learned Sub Judge, Dharmapuri.

2. The petitioner is the defendant, respondent is the plaintiff in O.S.No.37 of 2001 on the file of the Sub Judge, Dharmapuri. The petitioner filed a suit for specific performance of the agreement of sale dated 12.10.1998.

3. The petitioner had entered appearance through an Advocate. But, he did not contest the suit. An ex parte decree was passed on 02.12.2003. Therefore, the petitioner filed an application to set aside the ex parte decree along with I.A.No.229 of 2008 to condone the delay of 1661 days in filing the petition to set aside the ex parte decree.

4. According to the petitioner, at Dharmapuri, he engaged Mr.R.Srinivasan from Pallakadu, as an Advocate and gave vakalat. The Advocate informed the petitioner to come and contact as and when he informed the petitioner. The petitioner was under the impression that he will get information from his Advocate or notice from the Court. He did not get any information. On verification, the petitioner found that his Advocate shifted to Dharmapuri and he could not contact him. While so, he received a notice in R.E.P.No.38

of 2007 on 29.12.2007. On receiving the said notice, the petitioner contacted his Advocate and came to know that the exparte order was passed on 02.12.2003 against him. Immediately he filed an application to set aside the exparte decree along with the present I.A.No.229 of 2008 to condone the delay in filing the application to set aside the exparte.

5. The respondent filed counter affidavit and denied the averments mentioned in the affidavit and submitted that the reason given by the petitioner for the delay is not a valid one. He received notice in the R.E.P.No.38 of 2007 on 29.12.2007 and entered appearance through an Advocate on 30.01.2008 and also filed counter on 18.06.2008 in the E.P. Even after receiving notice in the E.P, the petitioner did not file any application immediately and in any event, he has not explained the delay from the date of receipt of notice in the E.P for filing the application to condone the delay.

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

7. Against the said order dated 06.09.2011, made in I.A.No.229 of 2008 in O.S.No.37 of 2001, the present civil revision petition is filed by the petitioner.

8. From the impugned order of the learned Judge, it is seen that the learned Judge has not considered any of the contentions of the petitioner as well as the respondent. The learned Judge has not given any reason for dismissing the application. In view of the same, the contention of the learned counsel appearing for the petitioner that the order of the learned Judge is not a speaking order and in an one line order, without giving any reason, the learned Judge has dismissed the application, has considerable force. The learned Judge has committed an error and did not exercise the powers conferred to him properly.

9. For the above reasons, the impugned order dated 06.09.2011 of the learned Judge is liable to be set aside. However, since there is enormous delay of 1666 days in filing the petition to set aside the exparte decree, this Court is of the view that the

petitioner shall be put on terms. Accordingly, the application to set aside the ex parte decree along with the I.A.No.229 of 2008 to condone the delay in filing the application to set aside the ex parte are allowed on condition that the petitioner pays a sum of Rs.5,000/- as cost to the respondent directly within four weeks from the date of receipt of a copy of this order and on producing the receipt, the learned Judge is directed to take the O.S.No.37 of 2001 and hear the matter on merits and dispose the same as expeditiously as possible, in any event not later than four months from the date of receipt of a copy of this order.

10. In the result, this Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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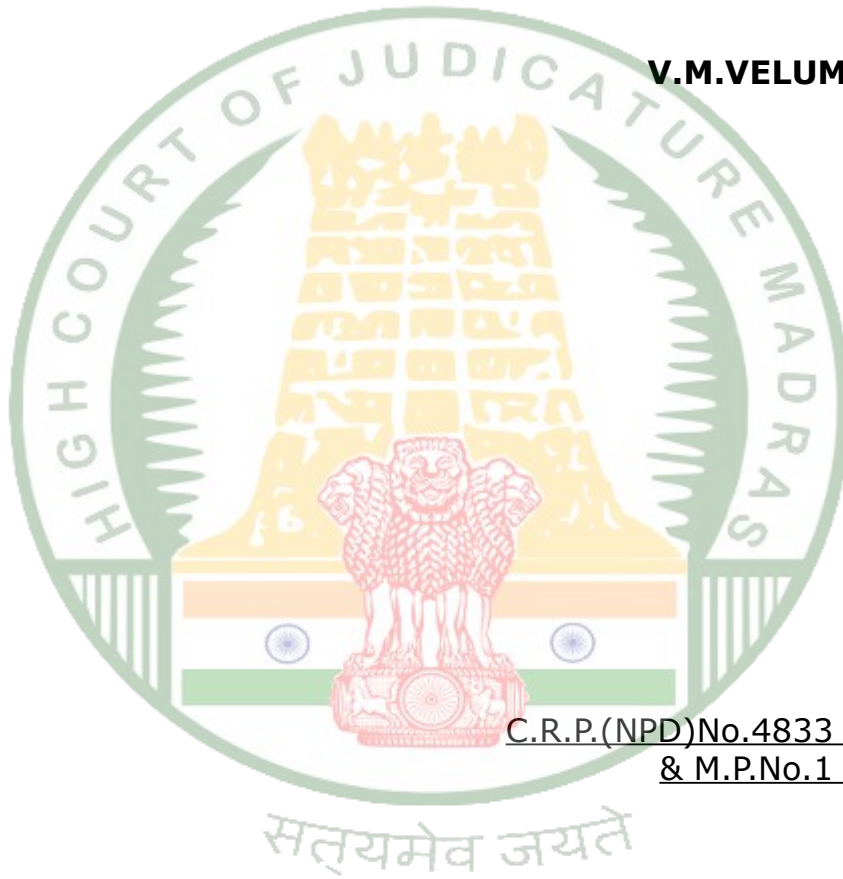
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To

The Sub Judge,
Dharmapuri

V.M.VELUMANI, J.

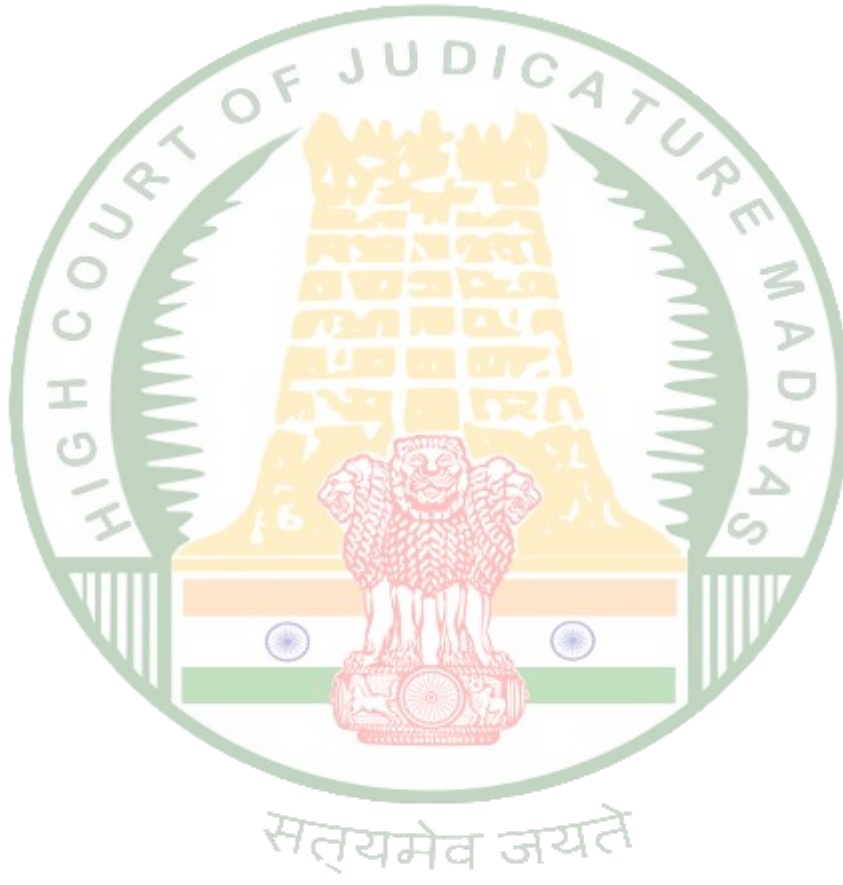
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