

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.358 of 2015
& M.P.Nos.1,2 of 2015

Nagaraja Reddy

.. Petitioner

Vs.

Anandha Reddy

.. Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 24.09.2014 made in I.A.No.236 of 2014 in I.A.No.268 of 2013 in O.S.No.74 of 2012 on the file of the Subordinate Court, Hosur, Krishnagiri.

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For Petitioner : M/S.R.Poornima

For Respondent : Mr.G.M.Anantha Kumar

ORDER

Civil Revision Petition is filed against the fair and decretal order dated 24.09.2014 made in I.A.No.236 of 2014 in I.A.No.268 of 2013 in O.S.No.74 of 2012 on the file of the Subordinate Court, Hosur, Krishnagiri.

2. The petitioner is defendant and respondent is plaintiff in O.S.No.74 of 2012 on the file of the Subordinate Court, Hosur, Krishnagiri. The respondent filed said suit for specific performance. The petitioner did not file written statement after entering appearance through advocate. He was set *exparte* and *exparte* decree was passed on 07.11.2012. The petitioner filed I.A.No.268 of 2013 to condone the delay of 139 days in filing the petition to set aside the *exparte* decree dated 07.11.2012. The said application was dismissed on 12.07.2013 for not taking steps to serve the respondent and non appearance of the petitioner and his counsel on three occasions. The petitioner filed the present I.A.No.236 of 2014 to condone the delay of 229 days in filing the petition to restore I.A.No.268 of 2013.

3. According to the petitioner, he was suffering from jaundice and due to that, he could not contact his advocate and file the application immediately. The application to restore I.A.No.268 of 2013 was filed on 12.08.2013, the same was returned and represented on 29.08.2013 after rectifying the defects. The said application was misplaced in the Court office and filed the present application with the delay of 229 days.

4. The respondent filed counter affidavit and submitted that after exparte decree dated 07.11.2012, respondent deposited a sum of Rs.25,000/- being the balance sale consideration on 23.11.2012 vide challan No.983 into Court. The respondent issued notice dated 22.12.2012 calling upon the petitioner to execute the sale deed and the petitioner received said notice, but did not execute the sale deed. The respondent filed R.E.P.No.44 of 2013 to execute the decree. The Executing Court executed the sale deed in favour of the respondent and it was registered as document No.2552/2014, dated 21.04.2014. The petitioner knew about the execution of sale deed and he has not taken any steps immediately, but filed application with the delay of 139 days in filing the petition to set aside the

exparte decree dated 07.11.2012. The reason given by the petitioner is not a valid reason for condonation of delay.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application.

6. Against the said order of dismissal dated 24.09.2014 made in I.A.No.236 of 2014 in I.A.No.268 of 2013, the present Civil Revision Petition is filed by the petitioner/defendant.

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

8. The learned counsel for the petitioner contended that the petitioner was suffering from jaundice and therefore, he could not contact his advocate to give instruction to file application to restore I.A.No.268 of 2013. The learned counsel for the petitioner also made submissions on all his defence in the suit.

9. The learned counsel for the respondent contended that the suit was decreed exparte and petitioner was aware of the exparte decree. The petitioner even after receiving notice from the Executing Court, did not take any immediate steps to set aside the exparte decree. The reason given by the petitioner is not correct. The petitioner failed to appear and contest the E.P., even after receiving notice from the Execution Court in the execution petition filed by the respondent and hence, the Court has executed sale deed in favour of the respondent on 21.04.2014. Only to harass the respondent, the petitioner has come out with the present Civil Revision Petition.

10. From the materials available on record, it is seen that the petitioner was given ample opportunity to file written statement. On his failure to file written statement, exparte decree was passed on 07.11.2012. The petitioner filed I.A.No.268 of 2013 to condone the delay of 139 days in filing the petition to set aside the exparte decree. According to the petitioner, he was not in station and therefore, he could not give instruction to his advocate to prepare and file written statement. The petitioner did not furnish any particulars as to when he left for outside and when he returned. In

the application for condonation of delay in filing the petition to set aside the exparte decree, notice was ordered to serve the respondent. On three occasions, the petitioner and his counsel did not appear and did not take any steps to serve the respondent. For non appearance and not taking steps by the petitioner, the application was dismissed. Again the petitioner filed present application to condone the delay of 229 days in filing the petition to restore the application in I.A.No.268 of 2013. According to the petitioner, in the present application, he has given reason that he was suffering from jaundice and he could not contact his advocate. He has not stated from when he was suffering from jaundice and he has not filed any document to substantiate his claim. It is pertinent to note that in the execution petition filed by the respondent, the petitioner even after receiving notice, did not appear and contest E.P. The Executing Court executed sale deed in favour of the respondent on 21.04.2012 vide document No.2552/2014.

11. Considering the above facts, I hold that the petitioner has not made out any case for condoning the delay of 139 days in filing the petition to set aside exparte decree or condoning delay of 229 days in filing the petition to restore I.A.No.268 of 2013. The learned

Judge has considered all the aspects in proper perspective and dismissed the application by giving cogent and valid reason. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 24.09.2014.

12. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

15.12.2017

Index : Yes/No
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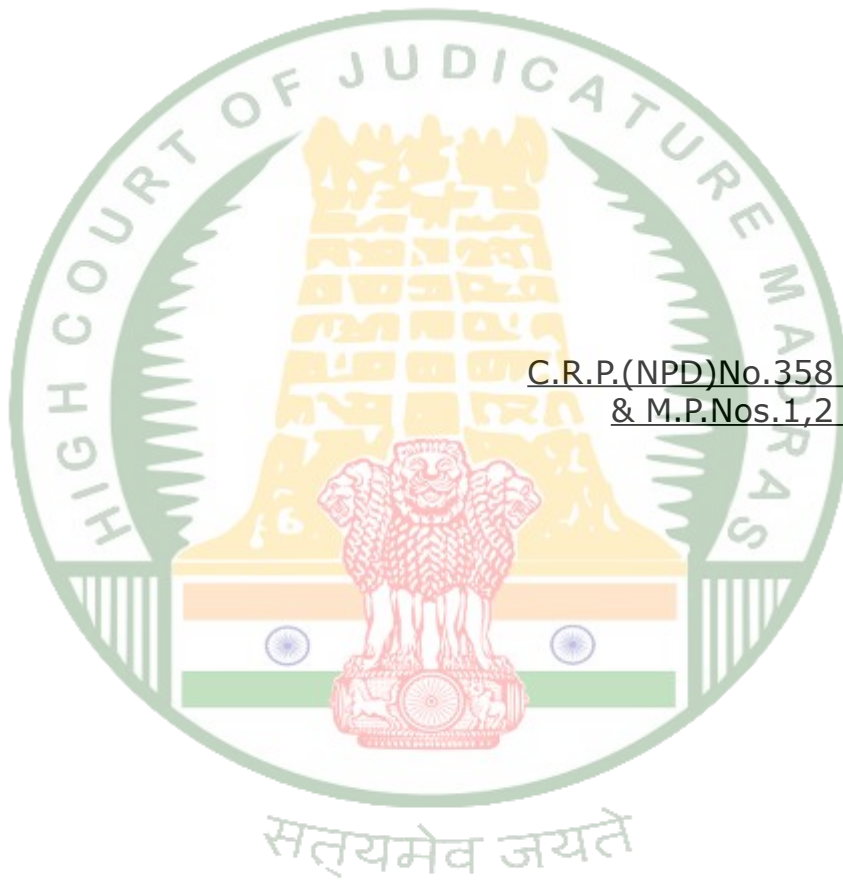
The Subordinate Judge, Hosur, Krishnagiri.



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V.M.VELUMANI, J.

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