

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.5157 of 2011
& M.P.No.1 of 2011

Mariammal .. Petitioner

Vs.

K.Ramayal ..Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 26.09.2011 made in I.A.No.212 of 2011 in O.S.No.216 of 2006, on the file of the I Additional Subordinate Court, Erode.

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.D.Selvarajan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 26.09.2011 made in I.A.No.212 of 2011 in O.S.No.216 of 2006, on the file of the I Additional Subordinate Court, Erode.

2. The petitioner is defendant and respondent is the plaintiff in O.S.No.216 of 2006, on the file of the I Additional Subordinate Court, Erode. The respondent filed the above suit for recovery of money against the petitioner, based on the promissory note dated 07.06.2004. The petitioner filed written statement on 01.12.2006. Subsequently did not contest the suit. The petitioner was set exparte and exparte decree was passed on 18.09.2007. The petitioner filed present application in I.A.No.212 of 2011 to condone the delay of 1203 days in filing the application to set aside the exparte decree dated 18.09.2007. According to the petitioner, she engaged an Advocate and filed written statement. He did not inform the petitioner about the stage of the suit and therefore, the petitioner did not appear before the Court and exparte decree was passed. She came to know the exparte decree only when she received notice in the E.P.No.191 of 2010 in O.S.No.216 of 2006.

3. The respondent filed counter affidavit on 03.06.2011 and denied all the allegations made by the petitioner and submitted that the petitioner only with an intention to drag on the proceedings has taken a stand that her Advocate did not inform her

about the stage of the suit. The learned Judge held that the petitioner has not furnished necessary particulars and has not given valid reason for condoning the delay. The learned Judge in order to give an opportunity to the petitioner, allowed the application on condition that the petitioner should deposit half of the decree amount into Court within a period of one month from the date of order i.e., on 26.09.2011.

4. Against the said order dated 26.09.2011 made in I.A.No.212 of 2011 in O.S.No.216 of 2006, the present civil revision petition is filed by the petitioner.

5. The contention of the learned counsel appearing for the petitioner that imposing such a condition is very onerous and is liable to be set aside has considerable force. It is well settled that the Court should not impose onerous condition. Either Court must allow the application by imposing reasonable cost for the inconvenience caused to the other side or dismiss the application in entirety on merits on each case.

6. When the civil revision petition is taken up for hearing, the learned counsel appearing for the respondent submitted that subsequent to filing of E.P.No.190 of 2010, the respondent filed another E.P.No.207 of 2013 and the salary of the petitioner was attached by order dated 30.04.2013 and entire decretal amount was attached and E.P was closed on 12.06.2014. In view of the same, nothing survives in the present civil revision petition.

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

8. Considering all the materials on record and reasons given by the learned counsel appearing for the petitioner and respondent, the order of the learned Judge directing the petitioner to deposit half of the decretal amount is set aside. The order in I.A.No.212 of 2011 to condone the delay shall stand allowed. Taking into consideration the submission of the learned counsel appearing for the respondent that already decree amount has been attached by filing E.P.No.207 of 2013, notwithstanding the order passed by this Court, it is open to the respondent to file a petition to withdraw the said amount attached in the E.P. With the above direction, the civil

revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

28.08.2017

Index: Yes/No
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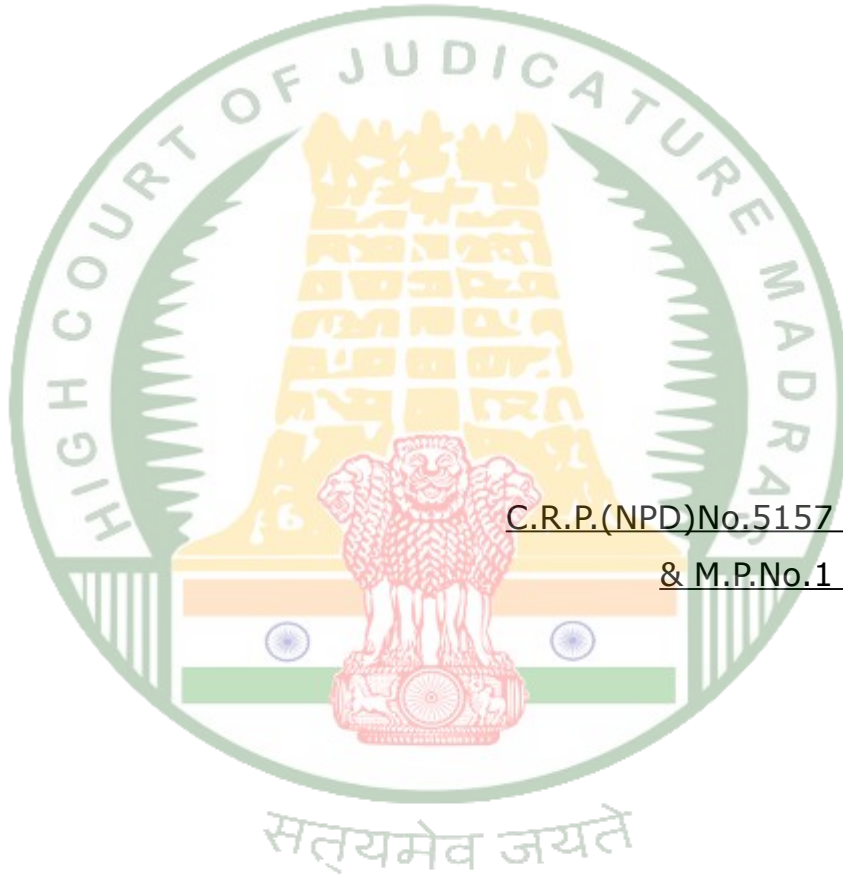
The I Additional Subordinate Judge,
Erode.



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V.M.VELUMANI,J.

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