

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP.NPD.No.4471 of 2015

and

MP.No. 1 of 2015

Maheswari

.. Petitioner

Vs.

1. Premkumar

2. District Collector
District Collector's Office
Tiruvarur

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the order & decretal order in I.A.No.112 of 2014 dated 06.10.2015 on the file of Principal District and Sessions Judge, Thiruvarur.

For Petitioner : Ms. R.V. Gayatri
for Mr. P.B. Ramanujam

For Respondent : Mr. S. Sivakumar for R1

Mr. V. Selvaraj, AGP for R2

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair & decreetal order passed in I.A.No.112 of 2014 dated 06.10.2015 by the Principal District and Sessions Judge, Thiruvavarur.

2. Brief facts of the case is as follows :-

The 1st respondent filed a suit in O.S. No. 4 of 2012, for recovery of possession against the petitioner. The petitioner herein was set ex-parte and decree was passed on 17.06.2013. hence, the 1st respondent initiated execution proceedings in E.P. No.32/2014, for delivery of possession. Whiles, the petitioner filed an application to set aside the ex-parte order, under Order 9 Rule 13 CPC, along with an application to condone the delay of 399 days. According to the petitioner, she was suffering from high fever and was bed ridden and therefore she could not contact her Advocate. The petitioner also produced a medical certificate as an exhibit, which was marked as Ex.P1. The petitioner also let in evidences and adduced witnesses before the court below, to substantiate her reasons for the delay. But, the court below had erroneously rejected the said application filed to condone the

delay, without considering the decisions rendered by the Hon'ble Supreme Court as well as this Court. Hence, this revision has been filed by the petitioner to set aside the order dated 06.10.2015.

3. On the other hand, Mr. S. Sivakumar, learned counsel appearing for the 1st respondent would submit that the 1st respondent filed a suit for recovery of possession and mesne profits. Pursuant to the ex-parte decree passed in the said suit, the petitioner filed an application to set aside the ex-parte decree, along with a condone delay application. After considering the submission of the parties, the court below has rightly rejected the application. He further submitted that the execution proceedings is pending before the Execution Court. Therefore, nothing warrants in the order passed by the court below.

4. Heard the learned counsel for the petitioner, the learned counsel for the respondents and perused the material available on records.

5. The petitioner has filed an application In I.A. No. 112 of 2014 to condone the delay of 399 days in filing the application to set aside the ex-parte decree. According to the petitioner, she was examined as PW1 before the court below and she adduced the reasons caused for the delay. The petitioner has also marked Medical Certificate and other documents before the court below to establish that the delay is only on bonafide reasons. The Court below without considering the said reasons has dismissed the above said application.

6. In ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others [2013 (5) CTC 547 (SC)]***, the Hon'ble Supreme Court has held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation of delay. In the light of the aforesaid judgment of the Hon'ble Supreme Court and the facts of the case on hand, as the petitioner has adduced oral and documentary evidences before the court below, to substantiate her reasons for the delay, this Court has no hesitation to set aside the order passed by the court below, in the instant Interlocutory Application in the suit.

7. Hence, this Court is inclined to pass the following order :

1. I.A. No.112 of 2014 in O.S. No.4 of 2012 passed by the Principal District and Sessions Judge, Thiruvarur is set aside and the delay is condoned on payment of cost of Rs.5000/- to the 1st respondent within a period of four weeks from the date of receipt of a copy of this order.
2. On instructions, both the parties undertake that they would cooperate with the court below, for the disposal of the suit, at an early date.
3. In the event of the Application filed under Order 9 Rule 13 of CPC is allowed, the court below is directed to dispose of the suit in accordance with law, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

8. This Civil Revision petition is disposed of, with the above direction. Consequently, the connected Miscellaneous Petition is closed.

No costs.

30.06.2017

D. KRISHNAKUMAR J.

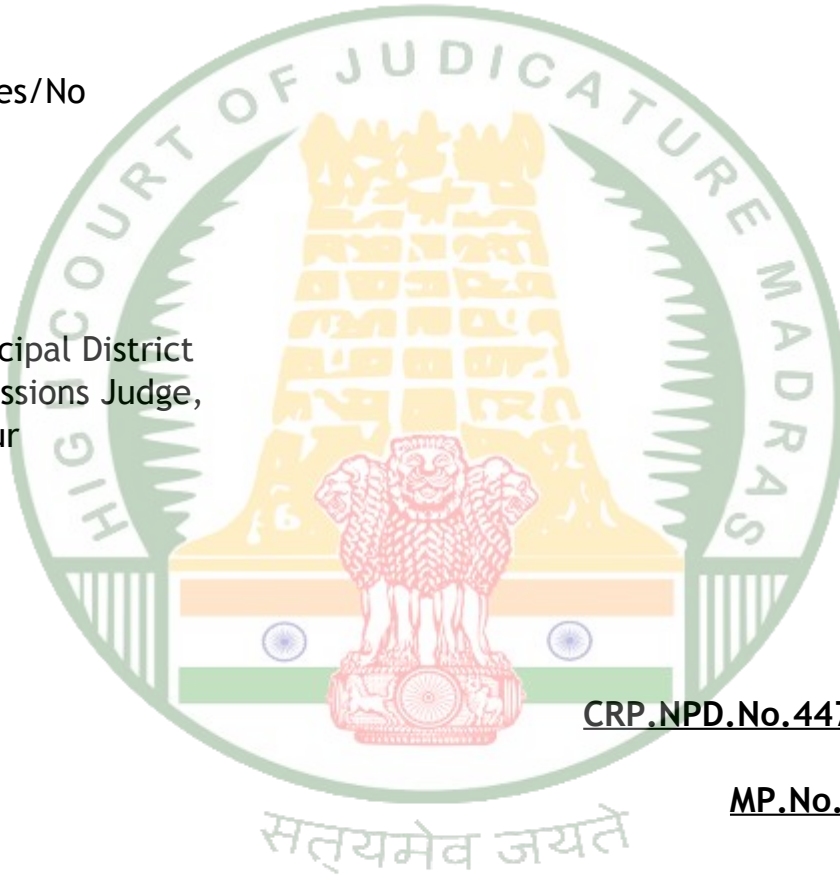
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Index: Yes/No

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To

The Principal District
and Sessions Judge,
Thiruvavur



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