

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.4768 of 2012
& M.P.No.1 of 2012

Geetha

.. Petitioner

Vs.

Nagarajan

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decreetal order dated 21.09.2012, made in I.A.No.56 of 2012 in HMOP.No.104 of 2008, on the file of the Principal Sub-Court, Mayiladuthurai.

For Petitioner : Mr.K.M.Vijayan

For Respondent : Mr.A.MuthuKumar

ORDER

This civil revision petition has been filed against the fair and decreetal order dated 21.09.2012, made in I.A.No.56 of 2012 in HMOP.No.104 of 2008, on the file of the Principal Sub-Court, Mayiladuthurai.

2. The respondent husband filed H.M.O.P.No.104 of 2008 against the petitioner wife for divorce, on the file of the Principal

Sub-Court, Mayiladuthurai. The petitioner did not appear and conduct the case. An ex parte decree was passed on 28.01.2010. The petitioner filed I.A.No.56 of 2012 to condone the delay of 819 days in filing the petition to set aside the ex parte decree.

3. According to the petitioner, on receiving notice in H.M.O.P.No.104 of 2008, she met the respondent and enquired about the same. The respondent informed her to ignore the notice and they stayed together for some time. The respondent, contrary to the promise, proceeded with the H.M.O.P.No.104 of 2008 and obtained the ex parte decree. The petitioner was residing in the house of the respondent at Elenthengudy village. The respondent disconnected the EB connection. At that time only, the petitioner came to know about the ex parte decree and filed the petition to condone the delay of 819 days in filing a petition to set aside the ex parte decree.

4. The respondent filed counter affidavit and denied all the averments made in the affidavit and submitted that the petitioner refused to receive the notice sent by the Court through post. Only after verifying this fact, the ex parte decree was passed. The petitioner refused to vacate the house belonging to the respondent.

The respondent filed O.S.No.54 of 2011 on the file of the Additional Sub Court, Mayiladuthurai. In the said suit also, after receiving the

summons, the petitioner did not appear and contest the suit. An exparte decree was passed on 19.09.2011 and the petitioner was directed to hand over the possession within a period of two months from the date of the order. The petitioner did not vacate and hand over the possession. The respondent filed E.P.No.74 of 2012. The delivery of possession was ordered by the Learned Judge on 07.09.2012.

5. It is not correct to state that the petitioner came to know about the exparte decree only when such an order was passed and when the EB connection was disconnected. On the other hand, the petitioner refused all the notices sent by the Court in the H.M.O.P.No.104 of 2008, as well as in the O.S.No.54 of 2011, for recovery of possession. She did not have any respect for Court and prayed for dismissal of the I.A.No.56 of 2012.

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

7. Against the said order of dismissal dated 21.09.2012, made in I.A.No.56 of 2012 in H.M.O.P.No.104 of 2008, the present civil revision petition is filed by the petitioner.

8. The learned counsel appearing for the respondent

submitted that already parties have settled the matter. The learned counsel appearing for the petitioner submitted that there is no instruction with regard to the settlement and argued the matter on merits.

8. Heard the learned counsel appearing for both sides and perused the materials available on record.

9. The contention of the learned counsel for the petitioner that after receiving notice, the petitioner met the respondent and he informed the petitioner to ignore the notice, is contrary to the facts. From the order of the learned Judge, it is seen that the petitioner refused to receive all the notices sent by the Court in H.M.O.P.No.104 of 2008 and summons sent in the O.S.No.54 of 2011. The learned Judge, considering the above fact, passed the ex parte order. In view of the refusal of the petitioner to receive the notice, the contention of the petitioner that she came to know the ex parte decree, only when the respondent disconnected the EB connection is without merits. The learned Judge considered all the above facts and dismissed the application. In the circumstances, there is no irregularity or illegality, warranting interference with the order of the learned Judge dated 21.09.2012.

10. In the result, the civil revision petition is dismissed.

However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

04.08.2017

gsa/klt
Index: Yes/No

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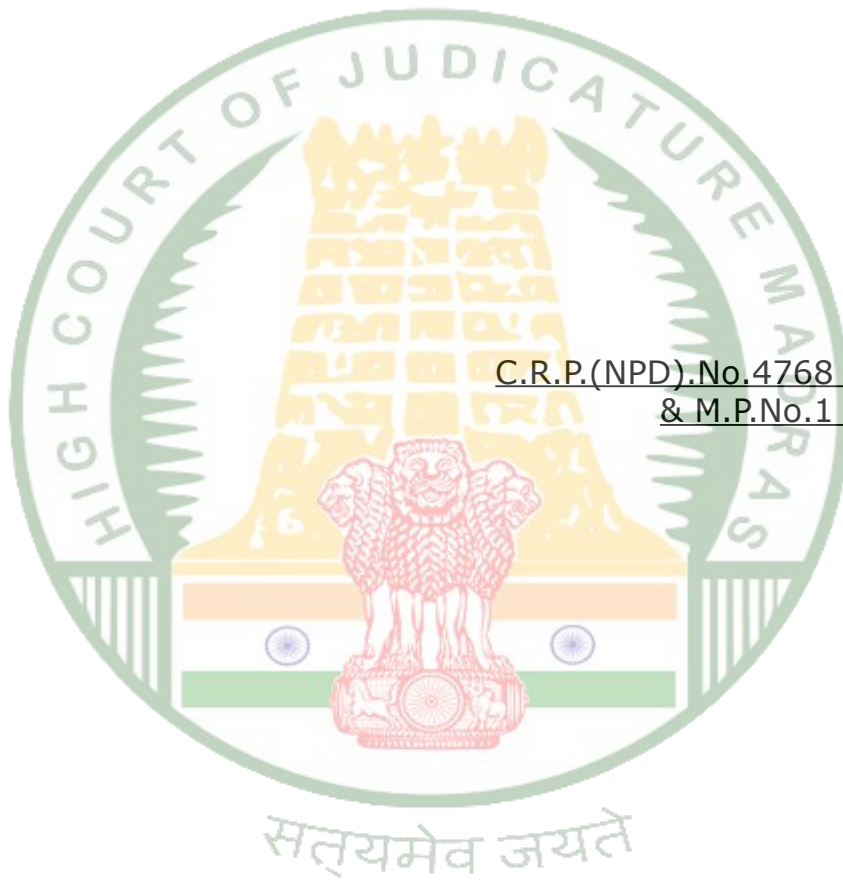
The Principal Subordinate Judge,
Mayiladuthurai



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V.M.VELUMANI, J.

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C.R.P.(NPD).No.4768 of 2012
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04.08.2017