

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

C.R.P.(N.P.D.) NO.1577 of 2017

M. Surya Kala

..Petitioner

Vs.

1. D. Vijyakumar
2. D.Mangalakshmi
3. M. Thirunavukarasu
4. Banumathi
5. S.Baskar @ Sivaseelan

..Respondents

(Respondents 2 to 5 were set exparte
in the trial Court, they are not necessary
parties to this CRP)

Prayer:The Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decretal order dated 16.03.2017 made in I.A.No.13123 of 2015 in O.S.No.811 of 2012 on the file of I Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.S. Udhayakumar

For Respondent No.1 : Mr. M. Balasubramaian
R2 to R5 exparte before
Court below

ORDER

The first respondent herein has filed a suit in O.S.No.811 of 2012 before the I Assistant Judge, City Civil Court, Chennai for redemption of three Mortgages dated 30.04.2001, 07.11.2001 and 20.07.2006 executed by the third respondent. After contesting the suit, preliminary decree was passed on 5.2.2013. As the revision petitioner failed to appear before the trial court, exparte decree has been passed. Thereafter, the revision petitioner filed an application to condone the delay of 892 days in filing the application to set aside the ex-parte decree dated 05.02.2013 in I.A.No.13123 of 2015. The said application was dismissed on 16.03.2017. Challenging the aforesaid order, the petitioner has filed the present Civil Revision Petition before this Court.

2. According to the learned counsel for the petitioner, the trial court without considering the reasons stated in the affidavit, erroneously dismissed the said application. Since the revision petitioner was seriously ill, he was unable to contact his counsel. Thereafter, he could not able to attend the hearing, an exparte decree has been passed by the trial court. Without considering the reasons stated in the affidavit filed in support of the condone delay application, the trial court dismissed the application. Therefore, the order passed by the court below is liable to be set aside.

3 The learned Counsel for the first respondent/plaintiff

would submit that pursuant to the preliminary decree passed on 05.02.2013, final decree was passed on 14.8.2014. Thereafter, E.P.No.1514 of 2015 was filed by the respondent and the same was allowed by the court below. Therefore, there is no warrant to interfere with the order passed by the court below.

4 In reply to the aforesaid contention, the learned counsel for the petitioner would submit that the petitioner has sold the property through private auction in the year 2007. Thereafter, petitioner is not vested with the property. On the submission made by the counsel for the respondent, final decree has been passed on 14.8.2014 and the revision petitioner has not challenged the final decree proceedings. Now, the petitioner has filed an application to condone the delay of 894 days in filing the application to set aside the exparte decree.

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

6. On perusal of the affidavit filed in support of the condone delay application, the petitioner has stated that he was an innocent purchaser suffering from illness and therefore, he was unable

to appear before the court below on the hearing date. On the side of petitioner, Ex.P1 and Ex.P2 were marked and on the side of the respondent, Ex.R1 and Ex.R2 were marked. On both sides, no oral evidence was let in. Therefore, this Court is not satisfied with the reason stated in the affidavit for inordinate delay and the petitioner has not chosen to adduce any oral and documentary evidence to prove bonafide reason to condone the inordinate delay of 892 days in filing the application to set aside the exparte decree. Subsequently, final decree also passed. Admittedly, the petitioner sold the property through private auction, further, the court below also take note of the fact that the other defendants had not contested the suit and they were also set exparte by the court below. Therefore, the order passed by the court below does not warrant any interference by this Court.

7 Accordingly, the Civil revision fails and the same is dismissed. No order as to costs.

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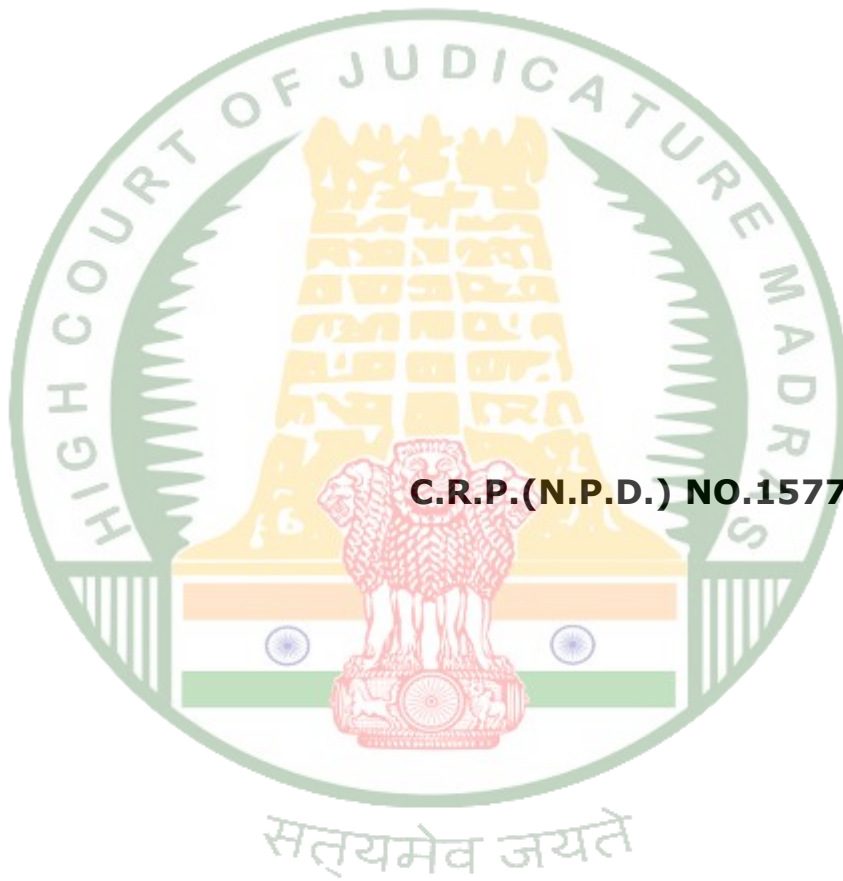
Speaking/Non-speaking order

Index: Yes/No

Internet: Yes/No

D.KRISHNAKUMAR.J,

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