

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1302 of 2014
and M.P.No.1 of 2014
and C.M.P.No.17472 of 2017

Govindaraj

.. Petitioner

Vs.

1.M.Kanagaraj
2.M.Lingaraj

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 15.07.2013 made in I.A.No.14857 of 2012 in O.S.No.6778 of 2010 on the file of the VIII Assistant City Civil Court, Chennai.

For Petitioner : No appearance

For Respondents : Mr.G.Santosh Kumar
for Mr.S.Jaganathan

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ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 15.07.2013 made in I.A.No.14857 of 2012 in O.S.No.6778 of 2010 on the file of the VIII Assistant City Civil

Court, Chennai.

2.The petitioner is the defendant and respondents are the plaintiffs in O.S.No.6778 of 2010 on the file of the VIII Assistant City Civil Court, Chennai. The respondents filed the said suit for permanent injunction, declaration and mandatory injunction. The petitioner on receipt of summons, entered appearance through counsel, but did not file written statement. On 30.10.2010, he was set exparte and exparte decree was passed on 19.01.2011.

3.The petitioner filed I.A.No.14857 of 2012 to condone the delay of 406 days in filing the petition to set aside the exparte decree dated 19.01.2011. According to the petitioner, he was not in station continuously from November 2010 to April 2011 and he met with an accident in April 2011 and therefore, he could not meet the Advocate and give instructions to prepare and file written statement.

4.The respondents filed counter affidavit and contended that the petitioner did not file written statement even after sufficient time was given for filing written statement. The petitioner entered appearance in E.P.No.3931 of 2011 through the same Advocate to

execute the decree. At that time, the petitioner did not file any application to set aside the exparte decree. The reason given by the petitioner is not bonafide and sufficient to condone the delay and prayed for dismissal of the application.

5.The learned Judge considering the averments in the affidavit, counter affidavit and judgment relied on by the counsel for the respondents reported in **2003 (1) LW 585**, dismissed the application.

6.Against the said order of dismissal dated 15.07.2013 made in I.A.No.14857 of 2012 in O.S.No.6778 of 2010, the petitioner has come out with the present Civil Revision Petition.

7.When the Civil Revision Petition is taken up for hearing on 20.03.2018, there was no representation for the petitioner. Hence, the matter was directed to be listed today under the caption "for dismissal". Even today, there is no representation for the petitioner. Heard the learned counsel for the respondents and perused the materials available on record.

8.The petitioner has filed application to condone the delay of 406 days in filing the petition to set aside the exparte decree dated 19.01.2011. According to the petitioner, he was not in station continuously from November 2010 to April 2011 and he met with an accident in April 2011 and therefore, he could not meet the Advocate to give instructions for preparing and filing the written statement or to file application to set aside the exparte decree.

9.From the materials available on record, it is seen that the petitioner has not given any details about being out of station from November 2010 and also has not produced any medical certificate to show that he met with an accident in April 2011. From the impugned order, it is seen that the petitioner entered appearance on 03.09.2010 and suit was adjourned to 08.10.2010 for filing written statement. Again it was adjourned to 08.12.2010 for filing written statement. The petitioner has not given any reason for the delay from the month of September 2010, when he entered appearance in the suit through Advocate. Further, the respondents filed E.P.No.3931 of 2011 to execute the decree. In E.P, the petitioner entered appearance but did not file any application immediately to

set aside the exparte decree with petition to condone the delay. It is well settled law that application for condoning the delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the parties have given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits.

10. In the present case, the reason given by the petitioner is not sufficient to condone the delay. The application to condone the delay is bereft of particulars. This shows that the intention of the petitioner is not bonafide but only to drag on the proceedings, the petitioner has come out with the present application. The learned Judge by giving cogent and valid reason, has dismissed the application. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 15.07.2013 made in I.A.No.14857 of 2012 in O.S.No.6778 of 2010.

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

22.03.2018

Index : Yes/No

gsa



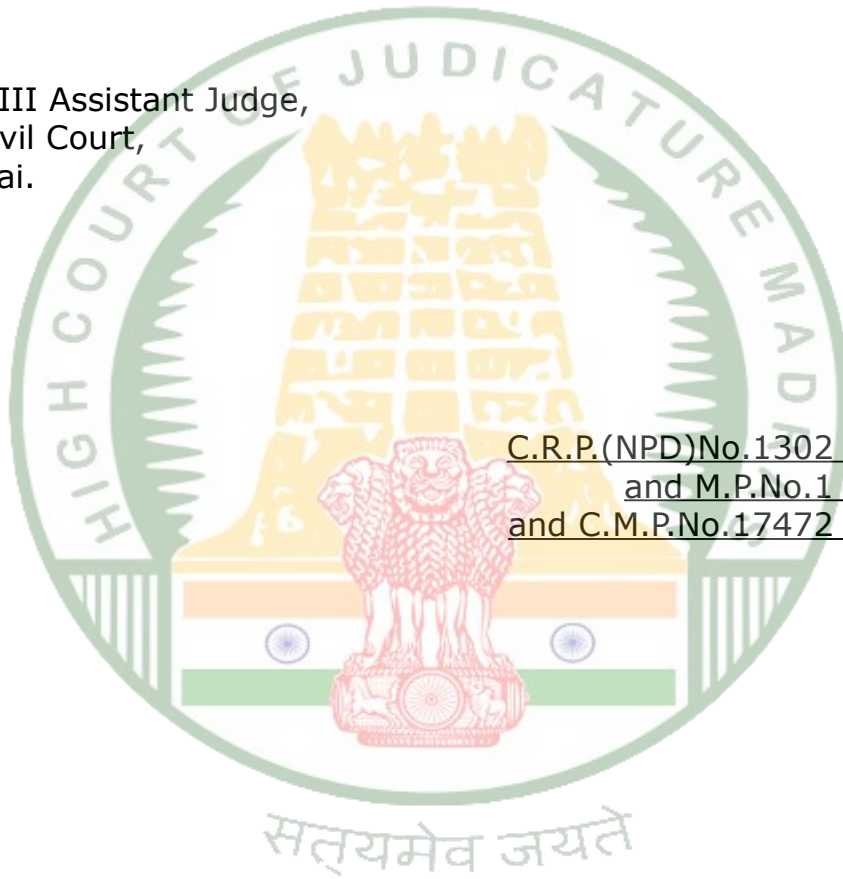
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V.M.VELUMANI,J.

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To

The VIII Assistant Judge,
City Civil Court,
Chennai.



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