

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).Nos.81 and 82 of 2011
and M.P.No.1 of 2011

R.Radhamani ... Petitioner in both revisions

Vs

S.Marudachalam ... Respondent in both revisions

Prayer in C.R.P.No.81 of 2011: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the fair and final order dated 18.11.2008 made in I.A.No.737 of 2007 in I.A.No.9 of 2006 in O.S.No.884 of 2000 on the file of the learned II Additional Subordinate Judge, Coimbatore.

Prayer in C.R.P.No.82 of 2011: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the fair and final order dated 18.11.2008 made in I.A.No.736 of 2007 in O.S.No.884 of 2000 on the file of the learned II Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.S. Thangavel

For Respondent : Not ready in notice

COMMON ORDER

C.R.P.(NPD).Nos.81 and 82 of 2011 are filed challenging the order passed in I.A.Nos.737 and 736 of 2007 respectively in the suit O.S.No.884 of 2000.

2.The facts in brief are as follows:

The respondent herein had filed a mortgage suit against the revision petitioner and after filing the written statement, the revision petitioner failed to cross examine the respondent, despite several opportunities being offered to the revision petitioner and ultimately an *ex parte* decree came to be passed on 19.10.2004. After *ex parte* decree was passed, the respondent herein has filed final decree proceedings in I.A.No.9 of 2004. In fact, the learned II Additional Subordinate Judge, Coimbatore,

while passing the preliminary decree has granted six months time for the revision petitioner to pay the decree amount. Since the payments were not forthcoming the final decree proceedings was initiated by the respondent.

3. In the said petition, the revision petitioner had entered appearance on 01.02.2006 and had taken time for filing counter statement. Thereafter, the revision petitioner had come forward with two applications, namely, I.A.No.736 of 2007 for condoning the delay of 1060 days in filing application to set aside the *ex parte* preliminary decree and I.A.No.737 of 2007 in I.A.No.9 of 2006 in O.S.884 of 2000 for condoning the delay of 520 days in setting aside the *ex parte* final decree passed on 22.03.2006. The affidavit filed in both the Interlocutory Applications are identical. The revision petitioner had contended that it was only she who had engaged a Counsel to prosecute the case and it was only when she received notice of the Execution Proceedings, she had come to know that a Preliminary Decree had been passed

against her and likewise a Final Decree.

4.The respondent had filed a detailed counter common to both the applications wherein he has narrated that after the revision petitioner had entered appearance in the suit, the suit had been adjourned 23 times. After filing of the Written Statement, the revision petitioner had filed an application in Tr.No.120 of 2004 before the District Court, Coimbatore, to transfer the suit from the file of the Subordinate Judge, Coimbatore. This application was dismissed on 17.09.2004. Thereafter, once again the petitioner took time in the Court on 30.09.2004, 15.10.2004 and finally on 19.10.2004 and ultimately the *ex parte* preliminary decree came to be passed. After passing of the *ex parte* preliminary decree, the final decree application was filed in I.A.No.9 of 2004 and the revision petitioner had entered appearance through her counsel in the final decree proceedings on 01.02.2006 and since she failed to file a counter affidavit an *ex parte* final decree was passed on

22.03.2006. Even, thereafter the revision petitioner had not immediately come forward with the petition to set aside the *ex parte* decree. On the contrary, nearly 1 ½ years later, the applications now subject matter of the revision has been filed. The respondent submitted that there was no *bona fides* in the applications filed by the revision petitioner and the same ought to be dismissed.

5. The learned Subordinate Judge, Coimbatore, after hearing both sides, proceeded to dismiss both the applications by observing that even after receiving notice in the final decree proceedings, the revision petitioner had not taken steps to set aside the *ex parte* decree and even after passing of the final decree, the revision petitioner had waited for over 1 1/2 years to file the application to set aside the *ex parte* decrees both in the Preliminary and Final. Challenging this order, the revision petitioner is before this Court.

6.Though notice has been served on the respondent, he had not entered appearance either through Counsel or through pleader.

7.Heard Mr.S.Thangavel, learned counsel for the petitioner and perused the material available on record.

8.A mere perusal of the counter filed in the petitions I.A.Nos.736 and 737 of 2007 would show the abject apathy that the revision petitioner has displayed in prosecuting the suit. Even the reason given for seeking the condonation of delay is false in the light of the records filed in the form of counter by the respondent. In the affidavit filed in the support of the applications, the revision petitioner would contend that she had got knowledge about the *ex parte* decree only when she received notice in the execution petition. However, a perusal of the

counter and the order of the Court below would clearly demonstrate that the revision petitioner was aware about the preliminary decree as well as the final decree as early as in March 2006. The application lacks *bona fides* and I find no infirmity in the order passed by the learned II Additional Subordinate Judge, Coimbatore.

In the result, these Civil Revision Petitions are dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

26.10.2018

Index : Yes/No

Speaking order/non-speaking order

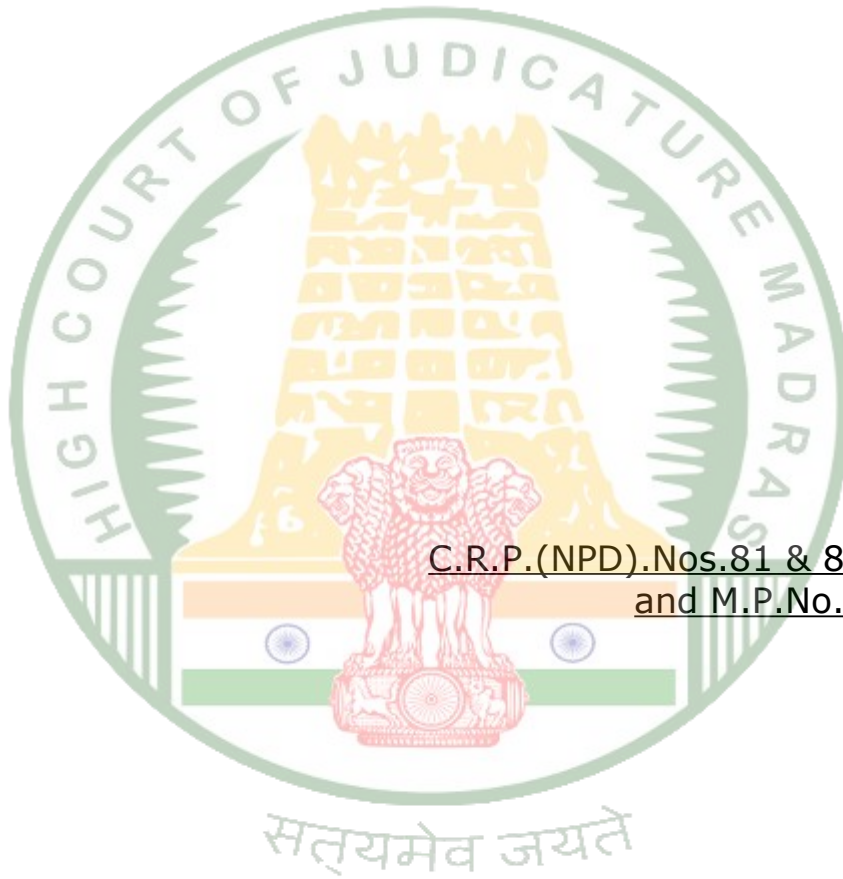
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To

The II Additional Subordinate Judge,
Coimbatore.

P.T.ASHA, J,

mps



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