

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

C.R.P. (NPD) No. 1263 of 2018
and
C.M.P. No. 6496 of 2018

Rajaram ...Petitioner

vs

M.S.Kumar ...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the petition and order dated 12.01.2017 made in unnumbered I.A.No. Of 2016 in O.S.No.141 of 2004 on the file of the learned Principal District Munsif, Ulundurpet and direct the learned Principal District Munsif, Ulundurpet to number the said I.A.

For Petitioner : Mr.T.Sathyamoorthy

For Respondent : Mr.T.Gandhi

ORDER

The order under challenge in the present revision petition is rejecting the petitioner's application filed under Section 5 of the Limitation

Act, to condone the delay of 4148 days in filing the application to set aside the ex-parte decree.

2. It is seen that in the Judgement and Decree in O.S.No.132 of 1999, the petitioner herein had filed his written statement and had also let in evidences. According to the observations of the trial Court, though several opportunities were given, the petitioner had not come forward to get along with the suit and therefore, the trial Court has chosen to pass Judgements on merits.

3. I do not find any procedural irregularity in such a course adopted, when there are sufficient evidences available before the Court to decide the issues in the suit and when one of the parties do not cooperate with the further proceedings, the Order 17, Rule 2 of the CPC empowers the trial Court to proceed with the case and render its Judgement.

4. The only ground raised by the petitioner before this Court in the present revision is that the suit came to be transferred from the Principal District Munsif Court, Villupuram to the Principal District Munsif Court, Ulundurpet and the notice of re-numbering of the suit in the District Munsif

Court was not received by him. It is in this process, there occurred a delay of 4148 days and the ex-parte decree which is passed, came to his knowledge, only after receiving summons in the execution petition in the year 2015.

5. I am unable to agree with such a contention made before this Court, which is also the reason given in his application to condone the delay of 4148 days. When the petitioner was aware that the suit was transferred from the Principal District Munsif Court, Villupuram to the Principal District Munsif Court, Ulunderpet in the year 2004 itself, the reasoning that he was waiting for eleven years for a summon to be issued to him regarding the re-numbering, looks far fetched. The petitioner herein ought to have been vigilant enough to atleast verify the status of the transferred suit and a mere submission that he had enquired with his lawyer, who had informed him that notice would come from the Court, alone, may not be sufficient to condone an inordinate delay of about eleven years.

6. Even otherwise, when a Judgement and Decree has been pronounced on the merits of the suit, it can only be said that the petitioner herein was deemed to be present for the disposal of the suit, since as per the observation of the Court that due opportunities were given to him, which he

had not availed of. When a Judgement and Decree has been passed on the merits of the case, it cannot be stated that he has been set ex-parte in the suit proceedings and in view of the same, proper remedy would have been only to file an appeal against the Judgement and Decree.

7. In support of this contention, the learned counsel for the respondent relied upon the decision of the Hon'ble Apex Court reported in **2003(2) CTC 242** in the case of **B.Janakiramaiah Chetty vs A.K.Parthasarathi and others**. Even in this ground, the application to condone the delay in filing the application to set aside the ex-parte decree, may not be maintainable.

8. In the result, I do not find any merits in the Civil Revision Petition. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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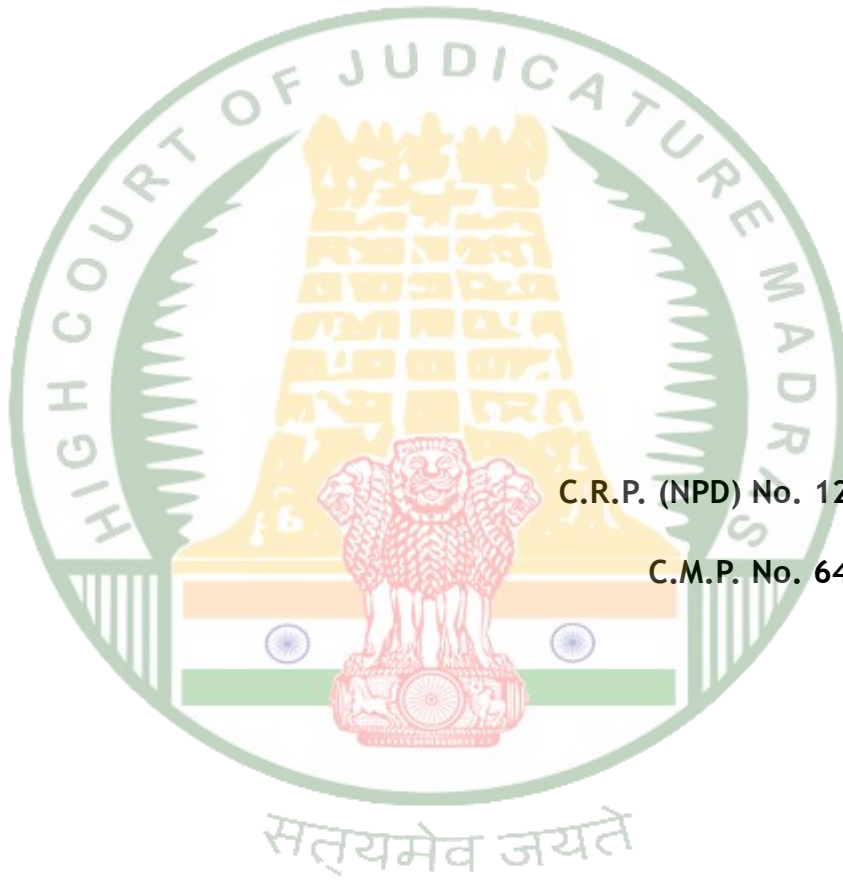
Index:Yes/No

Speaking Order: Yes/No

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M.S.RAMESH.,J

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