

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S. RAMESH

C.R.P(PD) No.172 of 2015
and
MP.No.1 of 2015

M.Jaikumar

..Petitioner

Vs

1.The Commissioner
Corporation of Chennai
Chennai -600 003.

2.The Executive Engineer
Unit XI, Zonal IV,
Corporation of Chennai
Rippon Buildings,
Chennai- 600003.

..Respondents

Prayer:- Civil Revision Petition filed under Article 227 of constitution of India, praying to set aside the order dated 12.9.2014 passed in I.A.No. 8851 of 2015 in O.S.No. 5396 of 2009 on the file of the XVI Assistant Judge, City Civil Court, Chennai by dismissing the application of the respondents and allowing the CRP.

For Petitioner

:Mr.Bijai Sundar

For Respondents

: Mr.V.C.Selvasekaran
for Corporation

ORDER

The order under challenge in the present Revision is against the order condoning the delay of 1175 days in filing the application to set aside the ex parte decree filed by the respondents herein. The reason assigned by the respondents in his application seeking to condone the delay is that the earlier standing counsel had resigned and returned the case bundles to the subsequent standing counsel and that when the application filed by the Corporation to condone the delay was misplaced in the Court's bundles and could not be traced out and therefore, delay of 1175 days.

2. Though, the delay of 1175 days seems to be inordinate, the merits of the case, as found in the pleadings, could also be looked into, for the purpose of determining as to whether any such irregularity had taken place here, as held in various orders of the Hon'ble Apex Court.

3. It is seen that challenge in the suit is to a notice under Section 56 seeking for demolition of building. According to the learned counsel for the first respondent herein, the suit challenging the notice is not maintainable in view of the provision of Tamil Nadu Country Planning Act. In my view, such a plea can be putforth during the course of the trial and final arguments. However, since the respondent has triable issues in hand, it would be appropriate to permit them to putforth their defence in the suit.

4. The learned counsel for the petitioner vehemently opposed the allowing of the application for delay on the ground that even if they had not appeared before the trial Court, when the application was taken up for hearing, there was a duty cast upon the Court to justify the reasons for allowing the application.

5. I am unable to accept such a plea. This is not a case where the trial Court is passing the judgment in the absence of the parties. The order passed under Section 5 is a discretionary relief and when the respondents herein had chosen not to appear before the Court, it was well within the powers of the Court to exercise its jurisdiction and pass an order in their absence. As such, I do not find infirmity in the order passed by the trial Court. Hence, the Civil Revision Petition stands dismissed.

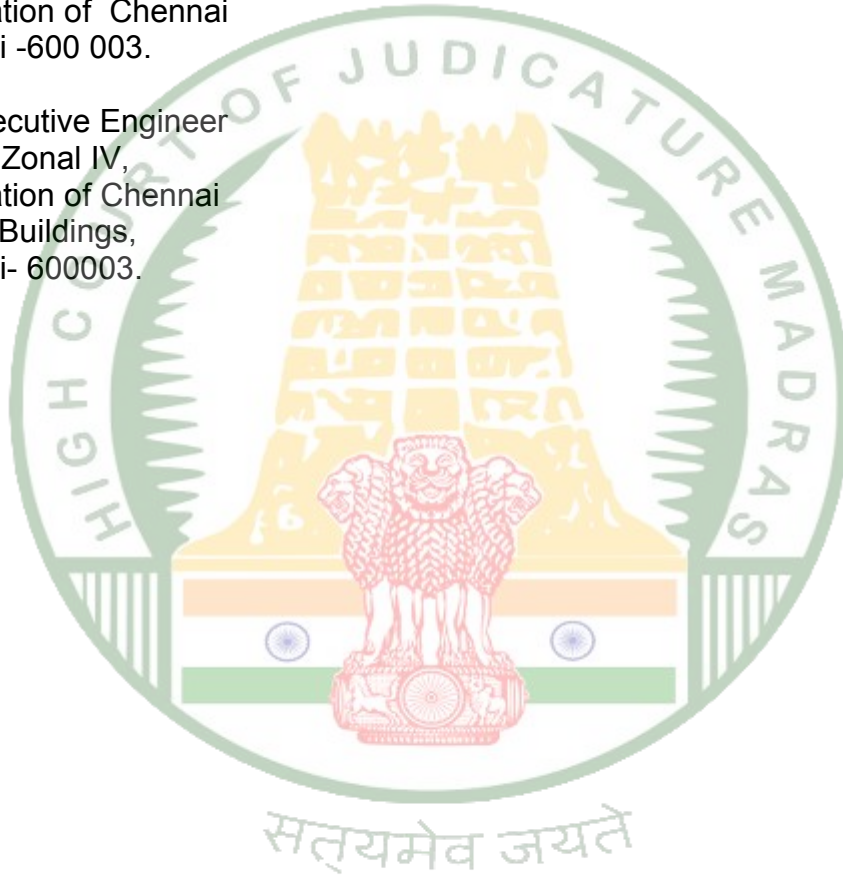
6. It is made clear that the above observations in the present Civil Revision Petition are only for the purpose of answering the grounds raised by the respective counsel in the present revision and that the trial Court shall not be influenced by any of the remarks made in this order touching upon the merits of the case. Consequently, connected Miscellaneous Petition is closed. No costs.

12.12.2018

Index : Yes/No

To

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City Civil Court, Chennai.
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Chennai -600 003.
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M.S. RAMESH.J.,

vsn/dh



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