

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P. (NPD) No. 2100 of 2013

and

M.P.No. 1 of 2013

Kamatchi

... Petitioner

..Vs..

Palanichamy

... Respondent

Prayer: The Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the order and decretal order dated 21.09.2010 passed in I.A.No.71 of 2010 in O.S.No.69 of 2006 on the file of the Subordinate Judge, Perambalur.

For Petitioner : Mr.P.N.George Graham

For Respondent : Ms.J.Prithivi
for M/s.A.K.Kumarasamy

ORDER

The instant Civil Revision Petition has been filed by the petitioner challenging the order dated 21.09.2010 passed by the Subordinate Judge, Perambalur in I.A.No.71 of 2010 in O.S.No.69 of 2006.

Brief facts leading to the filing of the instant revision:

2. The respondent is the plaintiff and the petitioner is the defendant in the suit. The respondent filed a suit for specific performance to enforce the sale agreement dated 24.07.2006 against the petitioner. The petitioner was set ex parte and an ex parte decree dated 12.03.2007 came to be passed by the Trial Court against the petitioner and specific performance was granted in favour of the respondent. I.A.No. 71 of 2010 in O.S.No. 69 of 2006 was filed by the petitioner seeking to condone the delay of 672 days in filing an application to set aside the ex parte decree dated 12.03.2007. The respondent has also filed his counter before the Trial Court in I.A.No. 71 of 2010 denying the averments contained in I.A.No.71 of 2010 and submitting that no sufficient reasons were given by the petitioner for condonation of delay. The Trial Court by its order dated 21.09.2010 in I.A.No.71 of 2010 dismissed the condone delay application.

3. Aggrieved by the dismissal of I.A.No. 71 of 2010, the defendant in the suit has filed the instant revision.

Submissions of the learned counsels:

4. Heard, Mr.P.N.George Grahan, learned counsel appearing for the petitioner and Ms.J.Prithivi for M/s.A.K.Kumarasamy, learned counsel appearing for the respondent.

5. According to the learned counsel for the petitioner, the petitioner was suffering from prolonged leg pain and being an illiterate lady, she did not know about the Court proceedings and only due to that reason, there was a delay of 672 days in filing the condone delay application. Further being a specific performance decree, the petitioner should be given an opportunity to defend the suit because it is the contention of the petitioner that no sale agreement was executed in favour of the respondent, but it was a case of loan transaction.

6. The learned counsel for the petitioner drew the attention of this Court to a letter dated 29.07.2006 sent by the petitioner's advocate to the respondent denying the execution of any sale agreement. According to the learned counsel for the petitioner, the said letter dated

29.07.2006 was sent to the respondent even prior to the filing of the suit by the respondent. Considering all these factors, the learned counsel for the petitioner would submit that the petitioner should be given an opportunity to defend the suit.

7. Per contra, the learned counsel for the respondent would submit that no sufficient reasons were given in the affidavit filed in support of I.A.No. 71 of 2010 seeking to condone the enormous delay of 672 days in filing an application to set aside the ex parte decree. According to her, the petitioner entered appearance in the suit, but failed to file her written statement and only due to the said reason, the Trial Court set the petitioner ex parte. Subsequently, an ex parte decree dated 12.03.2007 also came to be passed in favour of the respondent. She would further submit that no supporting documents were filed along with the condone delay application to prove that the petitioner was suffering from prolonged leg pain.

Discussion:

8. The suit for specific performance was filed by the respondent in the year 2006. Admittedly, the petitioner received the suit summons and

entered appearance in the suit, but did not file any written statement on time. Since the written statement was not filed, the petitioner was set ex parte and an ex parte decree dated 12.03.2007 came to be passed against the petitioner. The notice dated 29.07.2006 sent by the petitioner's Advocate to the respondent prior to the filing of the suit which is also one of the suit documents, disputes the execution of sale agreement by the petitioner in favour of the respondent, but admits that a sum of Rs.50,000/- was received by the petitioner from the respondent. On the same date. i.e., on 29.07.2006, the respondent has also sent a letter to the petitioner calling upon the petitioner to execute the sale deed, on receipt of the balance sale consideration of Rs.80,000/-. In the same letter, he has informed that he has already paid a sum of Rs.50,000/- and he is ready and willing to pay the balance sale consideration of Rs.80,000/- within 10 days from 29.07.2006. Both these letters were filed as plaint documents.

9. The Trial Court has considered the oral and documentary evidence let in by the respondent and has passed a decree dated 12.03.2007 in favour of the respondent.

10. The reason given for condonation of delay in I.A.No. 71 of 2010 by the petitioner is that she was suffering from prolonged leg pain. But, no medical certificate was produced by the petitioner in support of the said contention. Further, in the case on hand, the petitioner engaged a counsel to enter appearance in the suit, but failed to file a written statement and only due to that reason, she was set ex parte in the suit and subsequently, the ex parte decree came to be passed against her.

11. Further as seen from the impugned order, an execution petition E.P.No.14 of 2008 was also filed by the respondent to execute the ex parte decree dated 12.03.2007 wherein the petitioner entered appearance but did not file any counter. Ultimately a sale deed was executed by the Executing Court in favour of the respondent as per the decree passed in O.S.No. 69 of 2006. The respondent has also taken symbolic possession of the suit schedule property, since the tenants were in occupation of the same.

12. This Court concurs with the findings of the Trial Court in I.A.No. 71 of 2010 and also comes to the conclusion that the petitioner

has not given sufficient reasons for condonation of the enormous delay. In the result, there is no merit in the instant revision. Accordingly, the revision is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

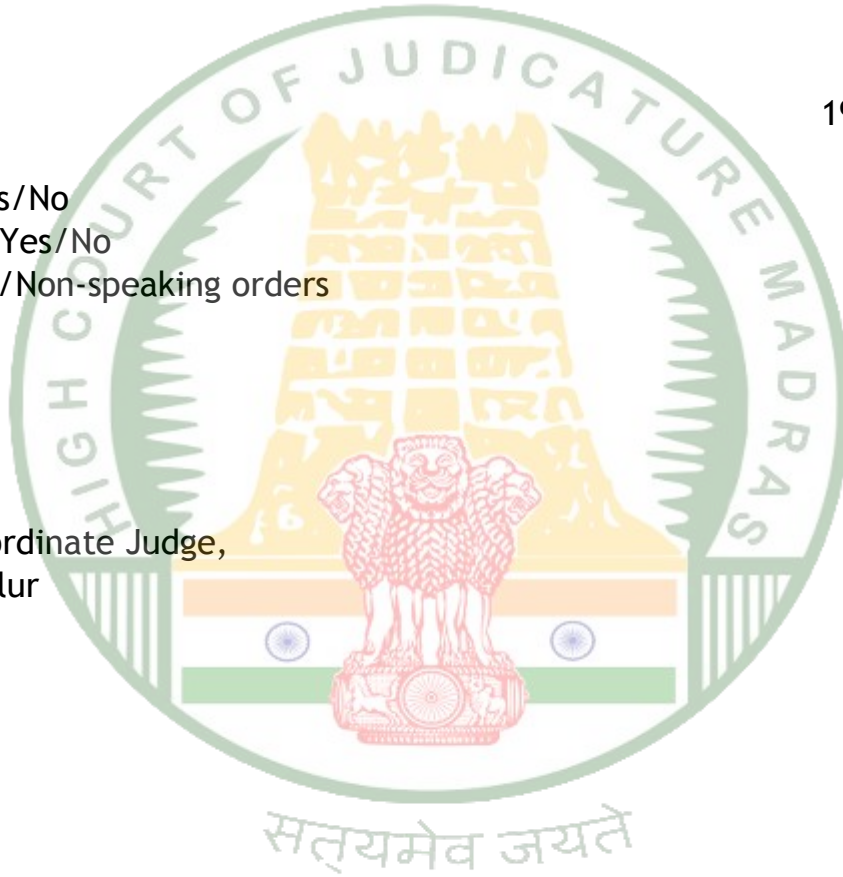
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Internet:Yes/No
Speaking/Non-speaking orders

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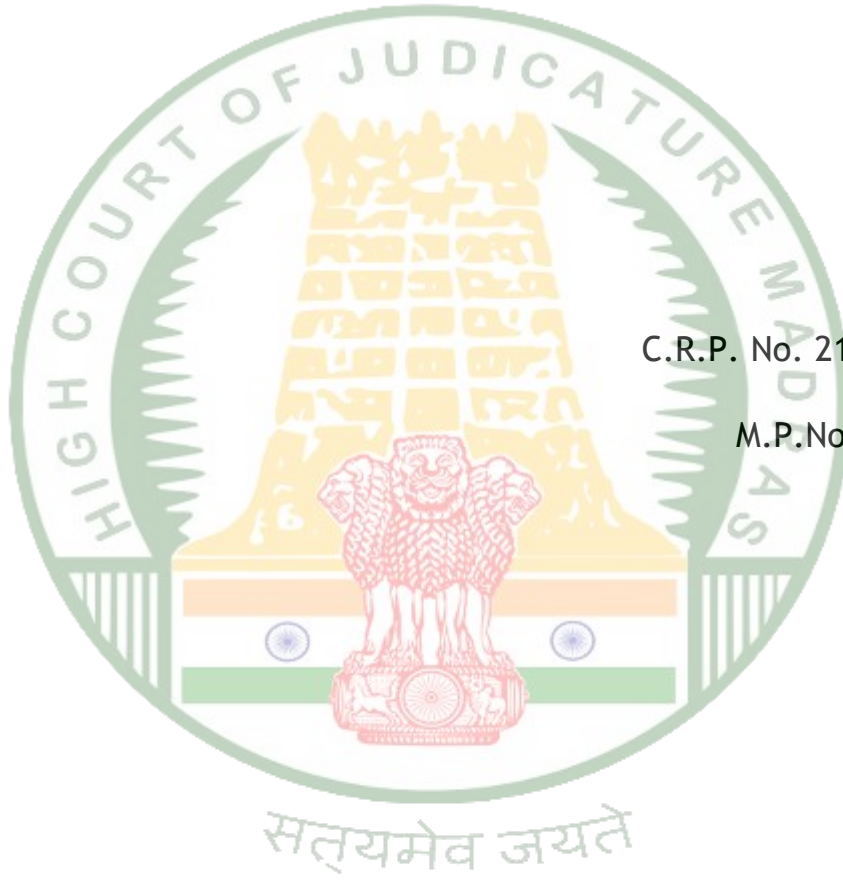
The Subordinate Judge,
Perambalur



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ABDUL QUDDHOSE, J.

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