

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 16.2.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.3053 of 2017 and C.M.P.No.14342 of 2017

S.Santhanamuthu ... Petitioner

Vs

A.P.Jayapandian Nadar ... Respondent

This Civil Revision Petition is filed under Article 227 of Constitution of India against the order dated 10.02.2017 made in I.A.No.1034 of 2016 in O.S.No.367 of 2009 on the file of the District Munsif cum Judicial Magistrate, Sriperumbudur.

For Petitioner : Mr.A.Edwin Prabakar
For Respondent : Mr.A.E.Ravichandran

सत्यमेव जयते
ORDER

According to the petitioner, the respondent has filed a suit in O.S.No.367 of 2009 for declaration and recovery of possession against the petitioner herein. In the aforesaid suit, the petitioner has filed written statement on 12.10.2009. Thereafter, plaintiff's side witnesses were examined and the suit was posted for cross examination of plaintiff's side

witnesses by the defendants. At this stage, since the petitioner was not appeared before the court below, the court below passed an ex parte decree against the petitioner. The petitioner has filed an application in I.A.No.1034 of 2016 to condone the delay of 673 days in filing the application to set aside the ex parte decree. The reason stated by the petitioner to condone the delay is that previous counsel was not able to appear before the court below since he shifted his practise to the High Court of Madras at Chennai and hence the petitioner could not able to contact him. Later, through neighbours petitioner came to know that the suit was decreed and the respondent has filed execution petition for delivery of property. Thereafter, the petitioner engaged the present counsel who filed the present application before the court below. However, the court below without considering the reasons stated in the affidavit filed in support of the petition, dismissed the application.

2 Per contra, the learned counsel for the respondent would submit that the petitioner with an intention to drag on the proceedings evaded the court proceedings resulting in the court below passed the ex parte decree. There is no sufficient reason stated in the affidavit to condone the delay. However, in the event of this court allowing the application, this Court may impose heavy cost on the petitioner.

3 Considering the facts and circumstances of the case and the reasons stated in the affidavit that previous counsel for the petitioner shifted his practise to the High Court, Chennai and therefore, petitioner could not contact him.

4 In *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others* [2013 (5) CTC 547 (SC)], the Hon'ble Supreme Court has held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation of delay.

5 In the facts and circumstances of the case and in the light of the judgment of the Hon'ble Supreme court cited supra, this court is inclined to set aside the order passed by the court below. Accordingly, the order passed by the learned District Munsif cum Judicial Magistrate, Sriperumbudur in I.A.No.1034 of 2016 in O.S.No.367 of 2009 is set aside.

WEB COPY

6 The Civil revision petition is allowed on payment of cost of Rs.15,000/- payable by the petitioner to the respondent within a period of three weeks from the date of receipt of copy of the order. In the event of compliance of this order, the trial court shall consider the application filed

under Order IX Rule 13 C.P.C. and pass appropriate orders. Connected miscellaneous petition is closed.

For reporting compliance, post the case after three weeks.

16.02.2018

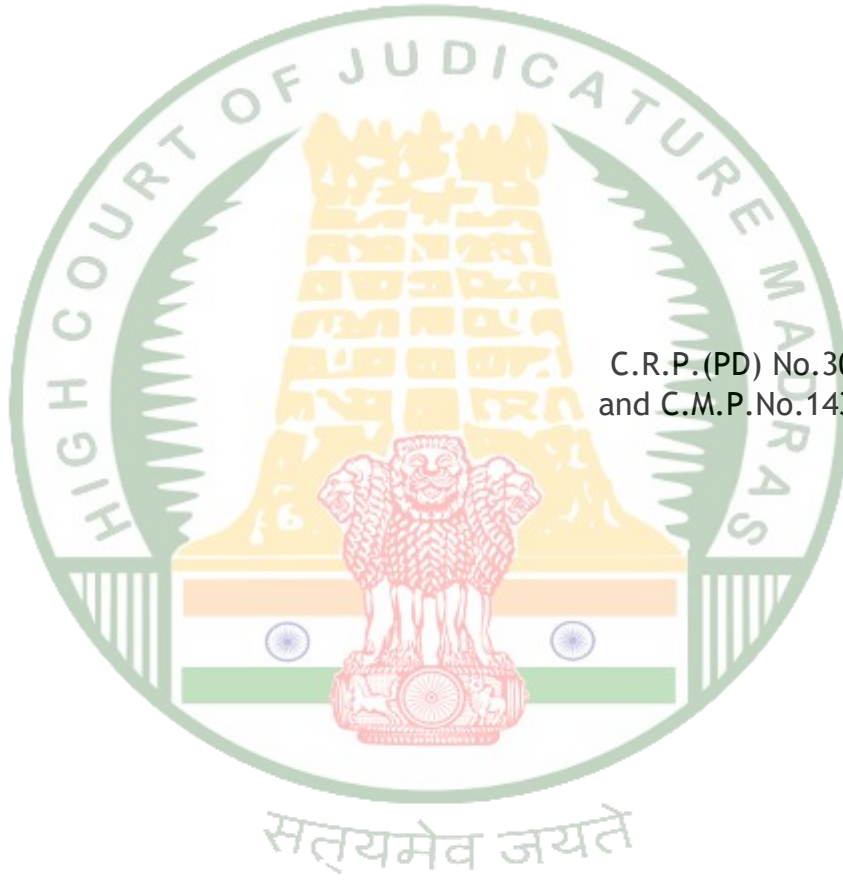
Speaking/Non Speaking Order
Index: Yes/No
vaan

To
The District Munsif cum Judicial Magistrate, Sriperumbudur.



WEB COPY

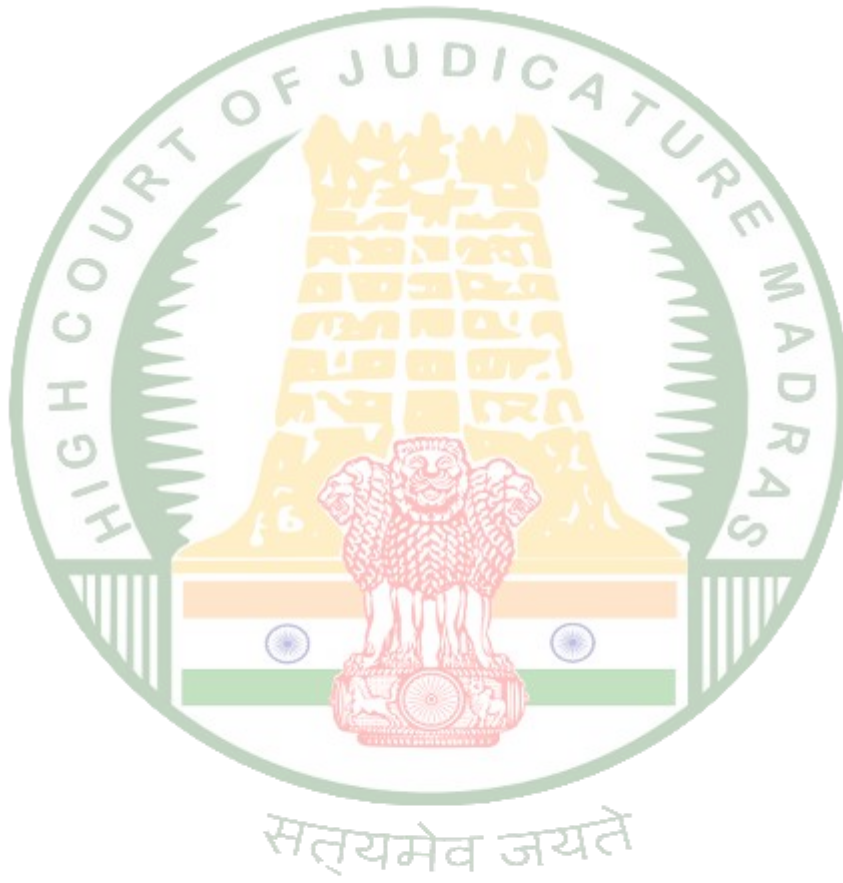
D.KRISHNAKUMAR,J.
vaan



C.R.P.(PD) No.3053 of 2017
and C.M.P.No.14342 of 2017

WEB COPY

Dated: 16.2.2018



WEB COPY