

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.07.2018

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

C.R.P.(NPD)No.3303 of 2017 and
C.M.P.No.15430 of 2017

1. Pachaiammal
2. Kavitha
3. Sampooranam

... Petitioners

Vs.

R.Shanmugam

... Respondent

Civil Revision Petitions have been filed under Article 227 of the Constitution of India against the fair and decretal order dated 29.06.2017 passed in REA.No.253 of 2017 in REP.No.189 of 2016 in O.S.No.537 of 2002 on the file of the learned I Additional Subordinate Judge, Salem District, praying to set aside the same.

For Petitioners : Mr.P.Rathnavel
For Respondent : Ms.R.Jeenitha for
Mr.K.K.Sakthivelan

ORDER

The civil revision petition has been filed against the order dated 29.06.2017 passed in REA.No.253 of 2017 in REP.No.189 of 2016 in O.S.No.537 of 2002 by the learned I Additional Subordinate Judge, Salem District.

2 The petitioners herein are judgment debtors and the respondent is decree holder. The respondent herein filed a suit in O.S.No.537 of 2002 for specific performance, which was decreed in favour of the respondent by judgment and decree dated 29.02.2008. Against which, the petitioners herein preferred an appeal in A.S.No.10 of 2008, which was also dismissed. In the interregnum period the respondent herein initiated execution proceedings in R.E.P.No.189 of 2016, wherein the petitioners were set aside due to their non appearance. The above said petition was allowed by order dated 04.02.2017 and sale deed was executed in favour of the respondent, subsequently delivery of possession was also ordered. At this stage, the revision petitioners had filed an interlocutory application seeking to condone the delay of 94 days in filing petition to set aside the exparte order dated 04.02.2017. The Executing Court after hearing both sides, exercised its discretionary power and dismissed the application by order dated 29.06.2017, since there is no stay and no second appeal is pending and also considering the fact that the decree granted in the year 2008 itself, the petitioners are dragging the proceedings. Aggrieved against the above said order dated 29.06.2017, the judgement debtors have filed this present

revision.

3 The learned counsel for the petitioner would submit that the revision petitioners, who are poor agriculturists, were not aware of the execution proceedings. When the bailiff attempted to take delivery of possession of the suit property, only they came to know about the order dated 04.02.2017. Hence the delay of 94 days in filing petition to set aside the exparte order dated 04.02.2017 has occurred. There is no decree for possession. The EP Court failed to consider the above fact and dismissed the application filed by the petitioners.

4 Heard the learned counsel appearing for the revision petitioners and perused the materials available on record.

5 On perusing the records, it is seen that the suit was decreed in the year 2008 itself and the decree holder still struggling in getting the fruits of the decree. The Executing Court, while dismissing the application, has discussed elaborately and has given valid reasons for not condoning the delay in filing petition to set aside the exparte order. The Trial Court has exercised its discretionary power and

dismissed the application seeking to condone the delay in filing petition to set aside exparte order dated 04.02.2017. It is purely the discretionary power of the Court, while exercising the discretionary jurisdiction, if there is any arbitrariness and there is no sufficient reason assigned in the order, then this Court can interfere with the same. In the order dated 29.06.2017, this Court does not find any illegality or infirmity. Hence the order of the trial Court does not warrants any interference of this Court.

6 In the result, the civil revision petition is dismissed. Consequently connected miscellaneous petition is closed. No costs.

05.07.2018

Index: Yes/No
Internet: Yes/No

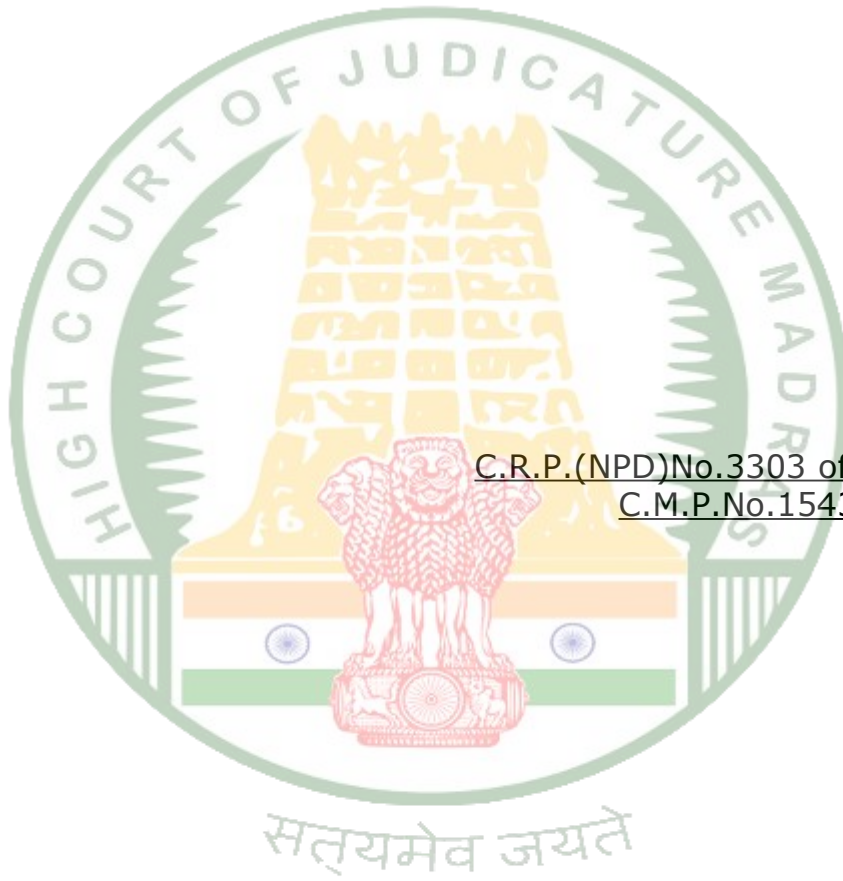
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Note: Issue order copy on 06.07.2018

To
The I Additional Subordinate Judge,
Salem District.

P.VELMURUGAN, J.,

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