

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P. (NPD) No.4782 of 2017
and
C.M.P No. 22485 of 2017

1. Katheeja
2. Ismail

.. Petitioners

Vs

K. Basheer Ali

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the petition and docket order dated 31.07.2017 passed by the District Munsif Court, Coimbatore in EP No. 73 of 2015 in O.S. No. 1912 of 2009 and allow the revision petition.

For Petitioners : Mr. S. Saravanan

For Respondent : Mr. L. Mouli

ORDER

This revision petition is filed to set aside the petition and docket order dated 31.07.2017 passed by the District Munsif Court, Coimbatore in EP No. 73 of 2015 in O.S. No. 1912 of 2009.

2. The learned counsel for the petitioners would submit that the respondent herein has filed the suit in O.S. No.1912 of 2009 seeking for mandatory injunction. After hearing both the parties, the District Munsif, Coimbatore decreed the suit in favour of the respondent/ plaintiff. Hence, the respondent filed an execution petition in E.P. No.73 of 2015, for executing decree and judgement dated 03.03.2015. The Executing Court passed an order on 31.07.2017. Challenging the said order, the present revision petition is filed.

3. According to the petitioners, pending execution proceedings, the appeal suit filed by the revision petitioner in A.S. No.26 of 2015 was dismissed for non-prosecution on 03.04.2017. Against the same, the petitioners filed an application in I.A. No.59 of 2017, to condone the delay of 137 days in filing the Application to set aside the

order dated 03.04.2017. The said application is still pending. Therefore, if the order dated 31.07.2017 is executed, the petitioners would be put to hardship and the same cannot be compensated.

4. Per contra, the learned counsel for the respondent would submit that pursuant to the dismissal of the Appeal Suit for default, the petitioners have filed an application in I.A. NO.59 of 2017. However, the petitioners have not obtained any interim order from the Appellate Court. Therefore, the order passed by the court below is perfectly in order and does not warrant any interference.

5. Admittedly, the petitioners have filed an application in I.A. No.59 of 2017 to condone the delay in filing the application to set aside the order of the Appellate Court, dismissing the Appeal Suit. The said application is pending before the Appellate Court. Therefore, in the interest of justice and by consent of both the parties, this Court is inclined to pass the following order :-

1. The Appellate Court is directed to dispose of the I.A. No.59 of 2017, within a period of four weeks from the date of receipt of a

copy of this order, after providing an opportunity to the parties concerned.

2. Till such time, the order passed by the Executing Court shall be kept in abeyance.

3. It is open to the petitioners to work out their remedy before the appropriate forum.

6. The Civil Revision Petition is disposed of, with the above direction. Consequently, the connected Miscellaneous Petition is closed.

No costs.

12.01.2018

Index : Yes/ No

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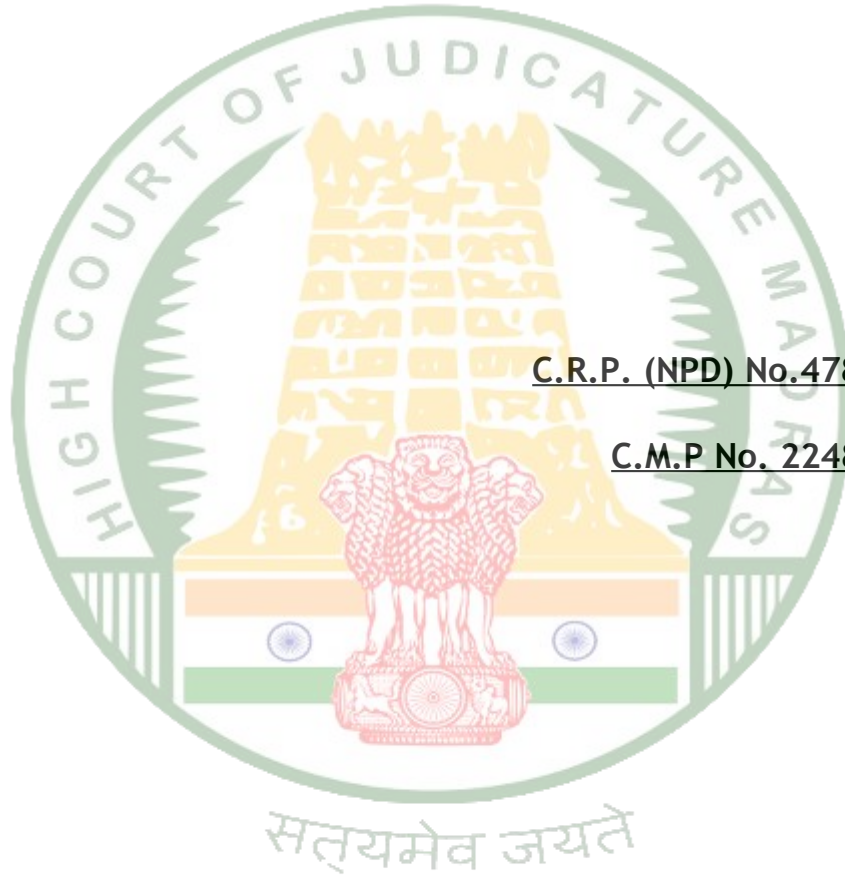
To

The District Munsif Court
Coimbatore.

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D. KRISHNAKUMAR J.,

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