

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Review Application No.25 of 2014
in C.R.P.(NPD).No.4450 of 2011

1.Sampath
2.Puratchi
3.Minor Shansukhan

.. Petitioners

(3rd petitioner is represented by his
father/guardian/ 1st petitioner)

Vs.

1.Pachiammal
2.Minor Sridevi
3.Minor Savithri

.. Respondents

(R2 and R3 are represented by
their mother/Guardian, R1)

PRAYER: Review Petition filed under Section 114 of C.P.C read with
Order 47 Rule 1 of C.P.C to review the order dated 28.10.2013
made in C.R.P.(NPD)No.4450 of 2011 on the file of this Court.

For Petitioners : Mr.K.Venkatakrisnan

ORDER

This Review Application is filed to review the order dated
28.10.2013 made in C.R.P.(NPD)No.4450 of 2011.

2.The petitioners are defendants and respondents are the plaintiffs in O.S.No.69 of 2006 on the file of the Principal District Munsif. The respondents filed the said suit for partition and separate possession of the suit property and also claiming maintenance of Rs.3,000/- for first respondent and Rs.2,000/- for respondents 2 and 3 from the first petitioner. The suit was decreed exparte. The petitioners filed an application to set aside the exparte decree within time. The same was returned by the learned Judge and was re-presented along with application I.A.No.57 of 2010 to condone the delay of 1097 days in re-presenting the application to set aside the exparte decree. The Trial Court dismissed the said application. This Court, by the order dated 28.10.2013 made in C.R.P.(NPD).No.4450 of 2011, set aside the order dismissing the application, on condition that petitioners deposit a sum of Rs.3,00,000/- towards maintenance to the credit of O.S.No.69 of 2006 and permitted the first respondent to withdraw a sum of Rs.1,00,000/- and allowed the Civil Revision Petition. This Court also held that failure on the part of the petitioners to deposit the amount, the Civil Revision Petition shall stand automatically dismissed, confirming the order of the learned Judge.

3.The petitioners have come out with the present Review

Petition to review the order dated 28.10.2013 made in C.R.P.(NPD).No.4450 of 2011 on the ground that order directing the petitioners to deposit a sum of Rs.3,00,000/- is erroneous on the face of the record and contrary to the law. The learned counsel for the petitioners also contended that this Court having held that delay has occurred due to the failure on the part of the Advocate to re-present the petition to set aside the exparte decree, ought to have allowed the Civil Revision Petition without any condition. The learned counsel for the petitioners also made submissions on merits stating that the petitioners are not entitled to in any manner or liable to pay any interim maintenance.

4.From the materials available on record, it is seen that as per the exparte decree, the petitioners are liable to pay a sum of Rs.3,000/- per month from the date of the petition and on a calculation made, it comes to around Rs.2,88,000/-, which was rounded of to Rs.3,00,000/-. This Court, considering this part of the decree and a sum of Rs.2,88,000/- was due and payable on the date of the order, directed the petitioners to pay a sum of Rs.3,00,000/- without prejudice to their right in the said suit as a condition to condone the delay as well as to set aside the exparte decree. It is a discretionary order and there is no error warranting

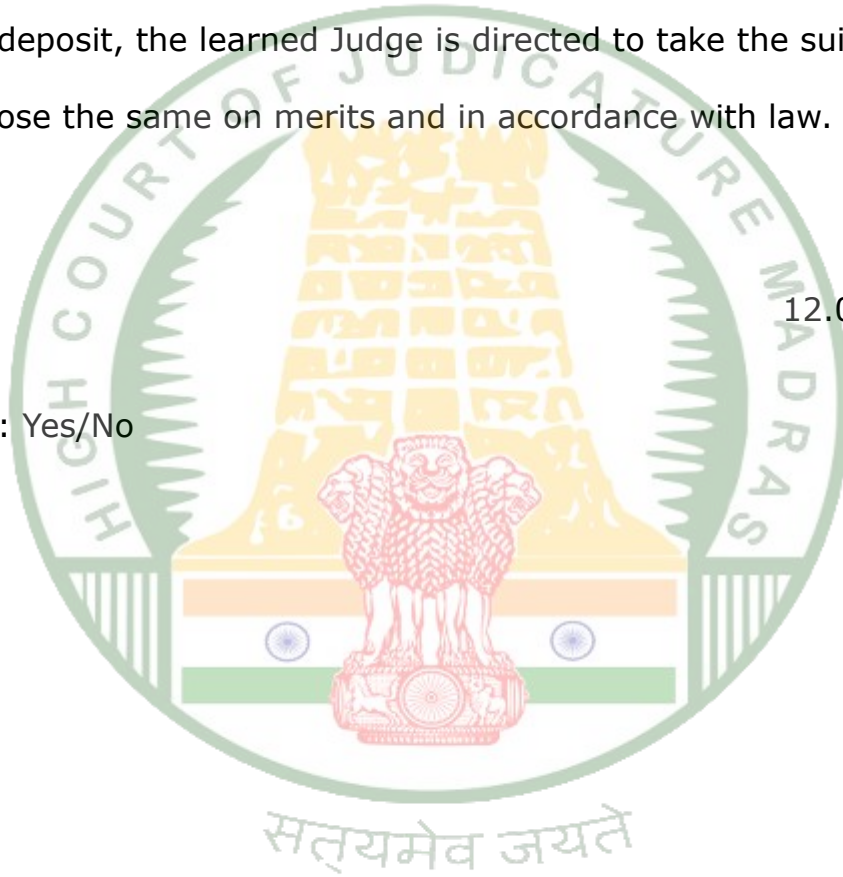
to recall the said order.

5.In the result, the Review Petition is dismissed. The petitioners are granted eight (8) weeks time to pay the amount and on such deposit, the learned Judge is directed to take the suit on file and dispose the same on merits and in accordance with law.

12.02.2018

Index : Yes/No

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V.M.VELUMANI, J.

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