

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1251 of 2015
& M.P.No.1 of 2015

Varadharajan @ Chinnarajan

.. Petitioner

Vs.

1.P.V.Narasimha Rao

2.Munivel @ Govindaraj

3.Krishnan

.. Respondents

Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 05.01.2015 made in I.A.No.530 of 2014 in O.S.No.10 of 2000 on the file of the District Munsif Court, Ponneri.

For Petitioner : Mr.I.Rathinavel

For R1 : Mr.C.Rajan

For R2 : Not ready in notice

For R3 : No appearance

WEB COPY

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 05.01.2015 made in I.A.No.530 of 2014 in O.S.No.10 of 2000 on the file of the District Munsif Court, Ponneri.

2.The petitioner is second defendant, first respondent is the plaintiff and respondents 2 & 3 are the defendants 1 & 3 in O.S.No.10 of 2000 on the file of the District Munsif Court, Ponneri. The first respondent filed the said suit against the petitioner, respondents 2 and 3 for permanent injunction restraining them from interfering with his peaceful possession and enjoyment of the suit property. On receipt of summons, the petitioner and respondents 2 and 3 entered appearance through one Advocate Mr.S.Manoharan, but they did not file written statement. An exparte decree was passed on 10.10.2000. The petitioner and respondents 2 and 3 filed I.A.No.530 of 2014 under Section 5 of Limitation Act to condone the delay of 4498 days in filing the petition to set aside the exparte decree.

3.According to the petitioner and respondents 2 and 3, their advocate Mr.S.Manoharan informed that written statement has been filed and suit is pending. During 2004, first respondent filed

E.P.No.47 of 2004, in which, Advocate Commissioner was appointed and he inspected the suit property and filed report stating that the petitioner and second respondent are in possession of the suit property. Subsequently, first respondent did not follow the E.P.No.47 of 2004 and the said E.P. was dismissed on 16.11.2010. Again in January 2012, bailiff came to the house of the petitioner to serve notice and informed that E.P.No.40 of 2011 has been filed by the first respondent for arrest of the petitioner and respondents 2 and 3. Immediately, they contacted their advocate and he did not give any proper answer and therefore, they engaged the present advocate and at that time, they came to know about the exparte decree dated 10.10.2000. Therefore, the delay is neither wilful nor wanton.

4.The first respondent filed counter affidavit and denied all the averments made in the said application and contended that the petitioner is Village Administrative Officer and he was aware of the proceedings. The petitioner appeared before the Executing Court in E.P.No.47 of 2004 filed by the first respondent and made an endorsement on 28.11.2005 that he will not interfere with the possession of the first respondent. At that time, the petitioner has

not taken any steps to set aside the exparte decree passed on 10.10.2000. The petitioner is making allegations against the earlier counsel Mr.S.Manoharan, who is no more. The present application filed after 12 years is not maintainable.

5.The learned Judge considering the averments made in the affidavit, counter affidavit, Court records and judgment relied on by the learned counsel for the petitioner and respondents 2 and 3, dismissed the application.

6.Against the said order of dismissal dated 05.01.2015 made in I.A.No.530 of 2014 in O.S.No.10 of 2000, the present Civil Revision Petition is filed by the petitioner.

7.Heard the learned counsel for the petitioner as well as the first respondent and perused the materials available on record.

8.From the materials available on record and impugned order of the learned Judge, it is seen that the petitioner and respondents 2 and 3 engaged same advocate and they entered appearance in the suit. But they did not file written statement and exparte decree

was passed on 10.10.2000. The first respondent filed E.P.No.40 of 2011 for arrest of the petitioner and that the petitioner and respondents 2 and 3 were arrested on 28.11.2005 and produced before the Execution Court and on their undertaking and endorsement that they will not interfere with the possession of the first respondent, they were released. Subsequently, in E.P.No.40 of 2011, the petitioner and respondents 2 and 3 have engaged same advocate, filed vakalat on 22.12.2011, counter on 04.04.2012 and took time for settlement. The said E.P. was pending from 14.12.2012 and the petitioner and respondents 2 and 3 filed present application on 06.03.2013.

9.From the impugned order of the learned Judge, it is clear that the contention of the petitioner and respondents 2 and 3 that they came to know about the exparte decree only on 23.02.2013 is not correct. They were aware of the exparte decree on 28.11.2005, when they were arrested and produced before the Executing Court. In the present E.P., after receipt of notice, they entered appearance through same advocate on 22.12.2011 and filed counter on 04.04.2012. These facts clearly show that the reason given by the petitioner and respondents 2 and 3 is not valid reason for

condonation of delay. They have not approached the Court with clean hands. They are blaming their earlier advocate who is no more. This Court on number of occasions, deprecated the practice of blaming their earlier advocate.

10. It is well settled that application for condoning the delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the parties have given acceptable and valid reason and the intention of the parties should be bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits.

11. In the present case, the petitioner has not given sufficient reason for condonation of delay and the intention of the petitioner is only to drag on the proceedings. The petitioner and respondents 2 and 3 have not approached the Court with clean hands. The learned Judge has considered all the facts in proper perspective and dismissed the application by giving cogent and valid reason. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 05.01.2015.

12. In the result, the Civil Revision Petition is dismissed. No

costs. Consequently, connected Miscellaneous Petition is closed.

08.03.2018

Index : Yes/No
kj

To

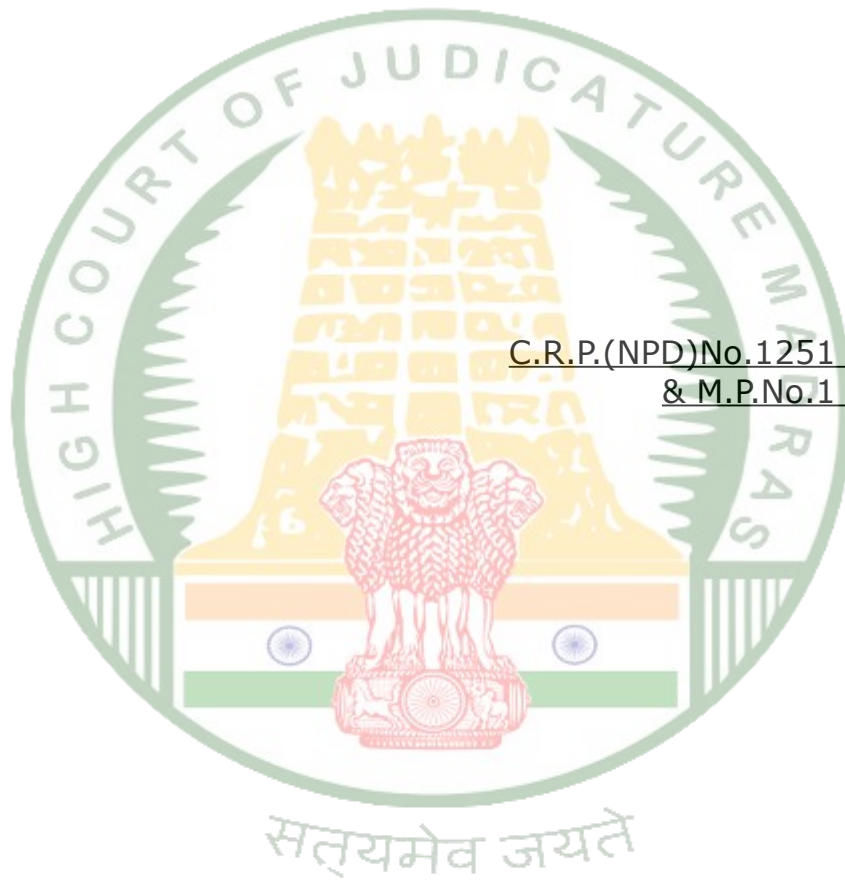
The District Munsif, Ponneri.



WEB COPY

V.M.VELUMANI, J.

kj



C.R.P.(NPD)No.1251 of 2015
& M.P.No.1 of 2015

08.03.2018
WEB COPY