

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P. (NPD) No.261 of 2018
and
C.M.P. No.1458 of 2018

M. Suseela

.. Petitioner

Vs.

1. G. Anbalagan

2. The Collector of Chennai
Singaravelar Maaligai
Chennai - 600 001.

.. Respondents

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 02.09.2016 and thereby allow the Interlocutory Application in I.A. No. 365 of 2016 in O.S. No. 6723 of 2005 on the file of Learned VII Assistant Judge, City Civil Court at Chennai and pass further orders.

For Petitioner

: Mr. R. Abdul Mubeen

ORDER

This revision arises against the fair and decreetal order dated 02.09.2016 and thereby allow the Interlocutory Application in I.A. No. 365 of 2016 in O.S. No. 6723 of 2005 on the file of Learned VII Assistant Judge, City Civil Court at Chennai.

2. The learned counsel for the petitioner would submit that the 1st respondent herein filed a suit in O.S. No. 6723 of 2005 before the VII Additional City Civil Court, Chennai for recovery of money against the petitioner herein. An exparte decree was passed on 20.01.2007. Against the same, the petitioner filed an application in I.A. No. 365/2016 to condone the delay of 3198 days in filing the application to set aside the ex-parte decree.

3. According to the petitioner, she has filed documents to prove that the petitioner was under treatment from 2007 till the date of filing of the application before the court below. However, learned counsel for the petitioner fairly admitted that the petitioner has not produced medical certificates for the period from 2007 to 2009, but has

subsequently produced the medical certificate before the court below. Hence, prayed for an opportunity to examine the Doctor, so that the petitioner shall prove before the court below, the bonafide reasons for non-furnishing explanation during the period 2007 to 2009.

4. Considered the submission of the learned counsel for the petitioner and perused the material available on record.

5. From the aforesaid submission, it is found that an ex-parte decree has been passed against the defendant/ petitioner on 29.01.2007. On that day, he was unable to appear before the court and subsequently also he was unable to appear, due to his ill-health. Thereafter, the petitioner filed an application in I.A. No.365 of 2015 on 30.11.2015. In the affidavit filed in support of the petition, the petitioner has stated that she was suffering from severe health disorders right from the year 2007 and it was persisting more profusely and aggravated day to day and that her health got deteriorated from bad to worst. In support of the said contention, the petitioner filed medical certificates before the court below from the year 2009. Admittedly, the

petitioner has not produced any satisfactory materials before the court below during 2007 to 2009, in the application.

6. There is no satisfactory reasons stated and no particulars has been furnished, in the affidavit filed by the petitioner. The Hon'ble Supreme Court in *H. Dohil Constructions Company Private Limited vs. Nahar Exports Limited and another* reported in (2015) 1 SCC 680, have held that unless the reasons are properly adduced, the delay cannot be condoned. The relevant paragraph is extracted below:

“ 24. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific

performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered."

7. In the light of the above facts and decision, since no sufficient cause has been shown for the inordinate delay in filing the application to set aside the ex-parte order, the order passed by the court below is confirmed and the civil revision petition is liable to be dismissed.

8. Therefore, the Civil Revision Petition fails and the same is dismissed. Consequently, the connected M.P is closed. No order as to costs.

सत्यमेव जयते

29.01.2018

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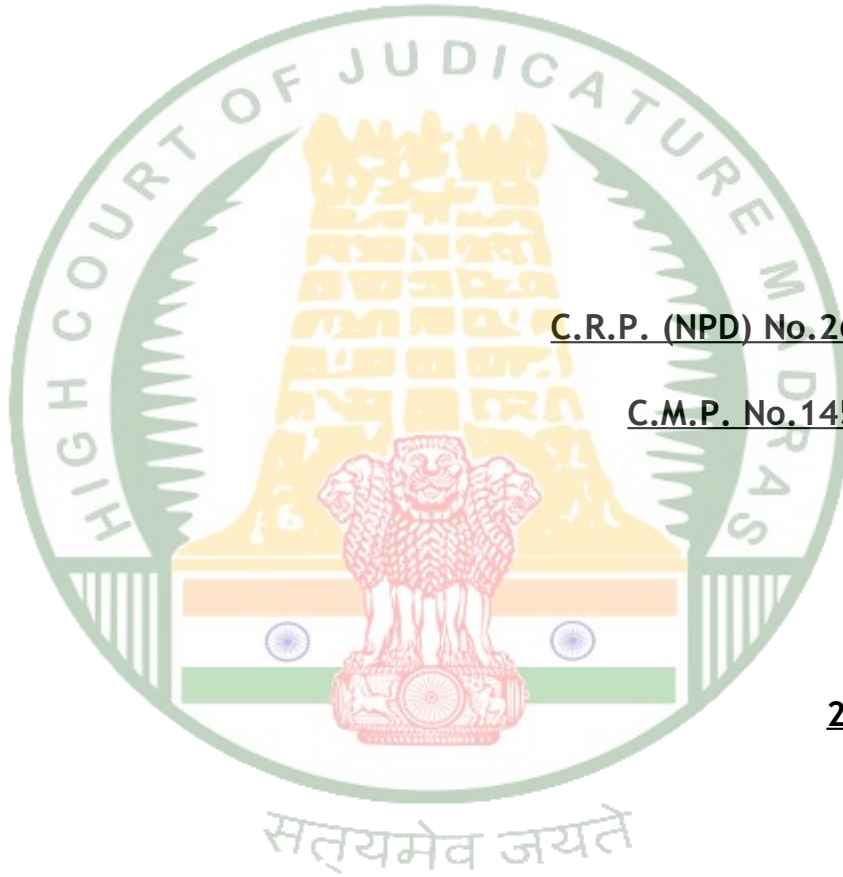
To

The VII Assistant
City Civil Court
Chennai.

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D. KRISHNAKUMAR J.,

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