

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.720 of 2014
& M.P.No.1 of 2014

Lesel Leodasse Fernand
Rep. By Power of Attorney Agent
Vikram Dolia

.. Petitioner

Vs.

P.Ragouramane

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair and decretal order dated 20.09.2013 made in I.A.No.98 of 2010 in A.S.No.18 of 2008 on the file of the II Additional District Court, Puducherry.

For Petitioner : Mr.R.Sreedhar

For Respondent : Mr.P.Veeraraghavan

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 20.09.2013 made in I.A.No.98 of 2010 in A.S.No.18 of 2008 on the file of the II Additional District Court, Puducherry.

2.The petitioner is defendant and respondent is the plaintiff in O.S.No.191 of 2002 on the file of the Principal Subordinate Court, Pucucherry. The respondent filed the said suit for recovery of a sum of Rs.2,74,516.50/- being the amount due and payable by the petitioner in respect of the contract of constructing a house for the petitioner. The petitioner contested the said suit. Trial Court decreed the suit by the judgment dated 28.11.2007, directing the petitioner to pay a sum of Rs.59,870/- to the respondent. The respondent filed A.S.No.18 of 2008. The petitioner did not appear after receiving notice in the said Appeal. The said appeal was allowed and suit was decreed as prayed for by the judgment and decree dated 30.06.2009.

3.The petitioner filed I.A.No.98 of 2010 under Section 5 of Indian Limitation Act to condone the delay of 397 days in filing the petition to set aside the exparte decree made in A.S.No.18 of 2008. According to the petitioner, on his return home in the month of May 2009, after a long work trip, he came to know that he has been served with the notice in A.S.No.18 of 2008 for his appearance before the Court on 30.01.2009. The said notice was not served on

him personally. The postman himself signed acknowledgement which is illegal. The petitioner counsel Mr.R.Balaraman, who had conducted the case on his behalf before the trial Court expressed his inability to take up the appeal. The petitioner came to Pondicherry and he was in Pondicherry between 05.01.2010 and 22.03.2010. During that period, he could not find any suitable Advocate to conduct the case. He came to know about the exparte judgment when his bank account with State Bank of India was freezed based on the order passed by the Principal Subordinate Judge, Pondicherry in E.P.No.61 of 2010. Immediately, he executed a Power of Attorney, authorising him to defend the case and Power Agent filed the present I.A to condone the delay in filing the petition to set aside the exparte judgment in A.S.No.18 of 2008. The delay in fling the application is neither wilful nor wanton.

4.The respondent filed counter affidavit and denied the averments made in the affidavit filed in support of the application. The respondent contended that petitioner was aware of the pendency of the above appeal but he did not take any steps either to conduct the appeal or to set aside the judgment passed in A.S.No.18 of 2008. The petitioner has given contradictory reason

for the delay in paragraphs 4, 5 and 6 of the affidavit and prayed for dismissal of the application.

5.The learned Judge considering the averments in the affidavit, counter affidavit, dismissed the application, holding that the reasons given by the petitioner are not true and they are only blatant lies and the fact remains that the petitioner was very well aware of the judgment passed in the appeal as early as in May 2009, but he was forced to defend the appeal only after his bank account was freezed by this Court.

6.Against the said order of dismissal dated 20.09.2013 made in I.A.No.98 of 2010 in A.S.No.18 of 2008, the petitioner has come out with the present Civil Revision Petition.

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

8.From the materials available on record and from the impugned order of the learned Judge, it is seen that the petitioner on his own admission has stated that he came to know about the

appeal in May 2009 itself. It is well settled law 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 is 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. In the present case, the petitioner has not given any reason for not engaging an Advocate and appointing Power Agent at that time itself. Similarly, when he came to Pondicherry in January 2010 and during his stay between January 2010 and March 2010, he has not taken any steps to find out the stage of the appeal and participate in the appeal proceedings. The reasons given by the petitioner that he could not find any suitable Advocate to conduct the case is not acceptable. In view of the above facts, the contention of the petitioner that he came to know about the judgment in A.S.No.18 of 2008 only when his account in the State Bank of India was freezed based on the order in E.P is contrary to the statement of the petitioner. In view of the above facts, the learned Judge has rightly dismissed the application by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned

Judge dated 20.09.2013 made in I.A.No.98 of 2010 in A.S.No.18 of 2008.

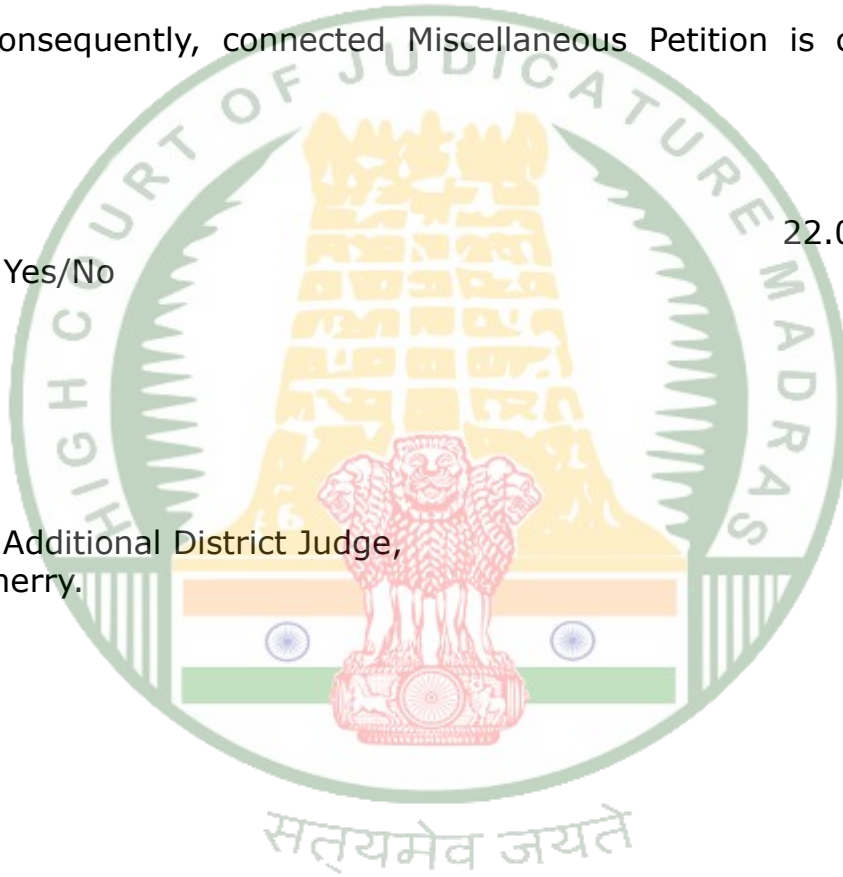
9.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.02.2018

Index :: Yes/No
gsa

To

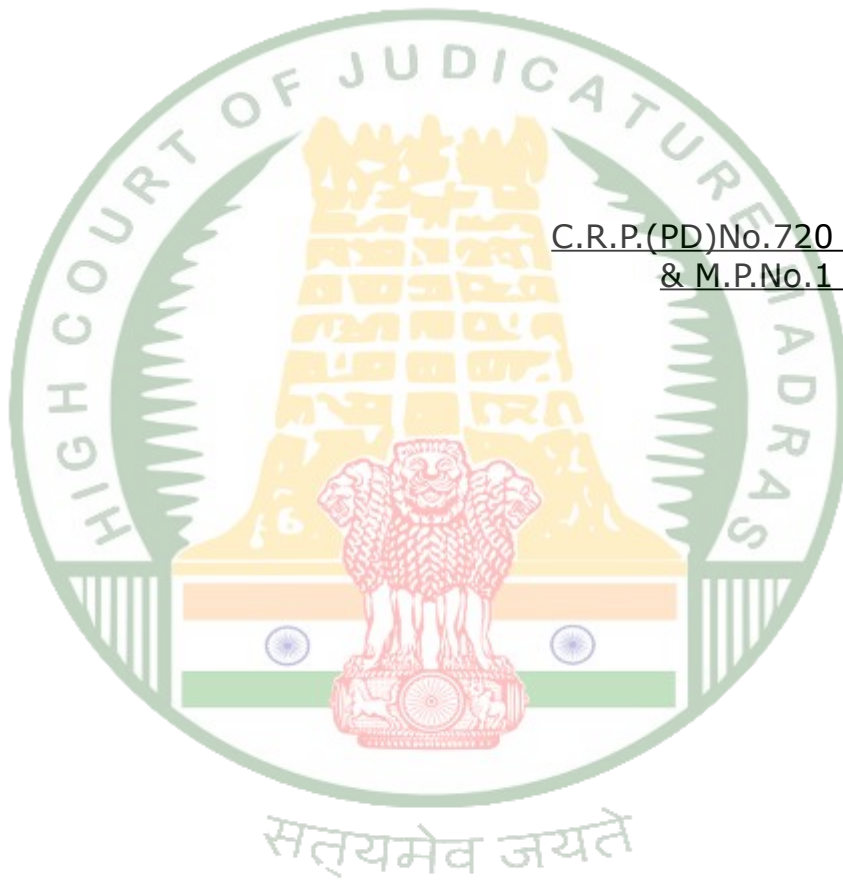
The II Additional District Judge,
Puducherry.



WEB COPY

V.M.VELUMANI,J.

gsa



C.R.P.(PD)No.720 of 2014
& M.P.No.1 of 2014

WEB COPY 22.02.2018