

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated : 04.12.2018**

**CORAM :**

**THE HONOURABLE MR. JUSTICE M.S.RAMESH**

**CRP.(PD).No.2457 of 2018**

**and**

**C.M.P.No.15030 of 2018**

M.Jayasankar

.. Petitioner

V.

1.M.Sathiyamurthy

2.K.M.Arumugam

3.M.Srinivasan

4.M.Sundararajan

5.The Sub Registrar,  
Sub Registrar Office,  
Avadi, Chennai-600 054.

6.The Sub Registrar,  
Sub Registrar Office,  
Poonamallee,  
Chennai-600 056.

सत्यमेव जयते. Respondents

**PRAYER :** Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the executable and fair order dated 23.07.2018 made in I.A.No.644 of 2017 in O.S.No.490 of 2016 by the learned Additional District Munsif, Poonamallee.

For Petitioner : Mr.M.Chidambaram

For Respondent-1: Mrs.C.Harini

**ORDER**

Being aggrieved by the order passed by the learned Additional District Munsif, Poonamallee in allowing the first respondent's application filed under Order 9 Rule 13 of the Civil Procedure Code viz., I.A.No.644 of 2017 in O.S.No.490 of 2016 dated 23.07.2018 in setting aside the ex-parte decree, the present revision has been filed.

2.Heard Mr.M.Chidambaram, learned counsel for the petitioner and Mrs.C.Harini, learned counsel appearing on behalf of the first respondent.

3.The learned counsel for the petitioner submitted that since the Court has given a finding that the first respondent herein had received the Court summons, it ought not to have exercised its discretion by setting aside the ex-parte decree. It is also the submission of the learned counsel that pursuant to the decree, all the revenue records have been mutated in the Registrar Offices and if ex-parte decree is set aside, serious prejudice would be caused.

4.The learned counsel for the first respondent submitted that the reason assigned in the application is that after receiving the summons, the first respondent had misplaced the same and

therefore, they were not in a position to engage a lawyer to contest the suit. It is in this background that the said application was made and the same came to be allowed by the trial Court. However, the trial Court while accepting the said application, allowed the same by imposing a costs of Rs.1000/-.

5.The application under Order 9 Rule 13 of the Civil Procedure Code is a discretionary power vested with the trial Court and what requires to be looked into is the purpose for exercising such a discretion and the reasoning given in the application for having been set ex-parte in the proceedings. In the present case, the first respondent herein having said that they were unable to engage a lawyer since the summons itself seems to be misplaced seems to be an acceptable reason as the first hearing was on 23.12.2016 and the first respondent herein was set ex-parte on 09.02.2017 that is within two months. It is seen that the first respondent herein had also filed the application to set aside the ex-parte decree on 13.04.2017 and hence, there does not seem to be any inordinate delay in approaching the trial Court in filing the said application. Consequently, it only reveals that the trial Court had properly exercised its discretion and allowed the application. As such, I do not find any infirmity in the said order. Hence, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous

Petition is closed. No costs.

6. Since the suit was initiated in the year 2016, the trial Court shall endeavor to complete the same as expeditiously as possible.

**04.12.2018**

Index : Yes/No  
speaking order/non speaking order

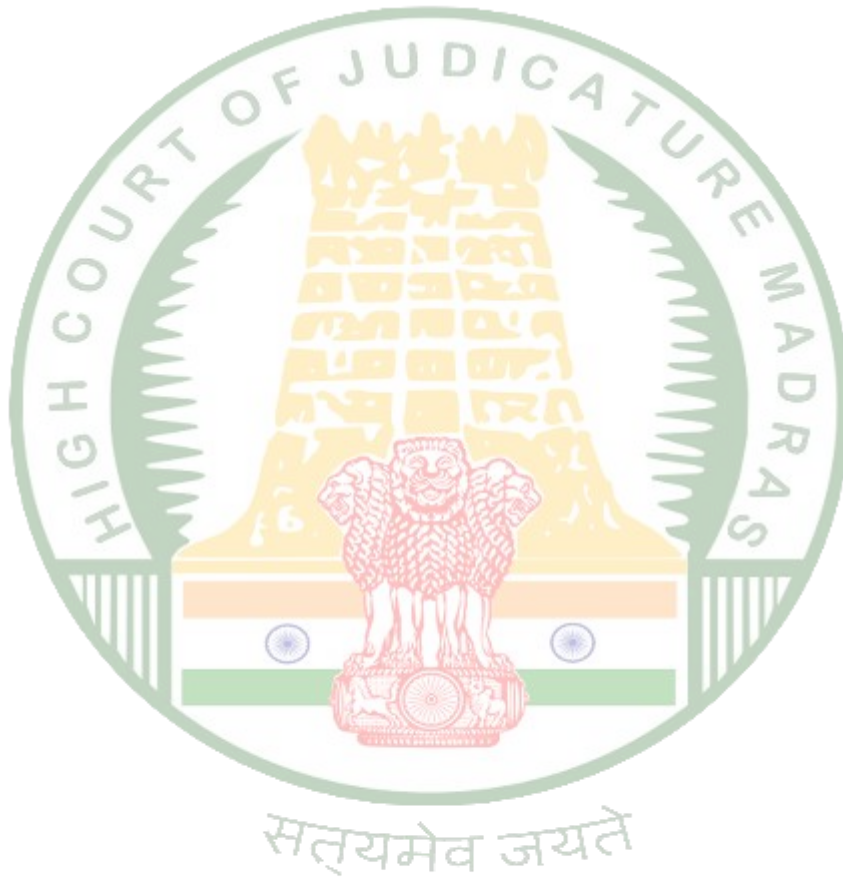
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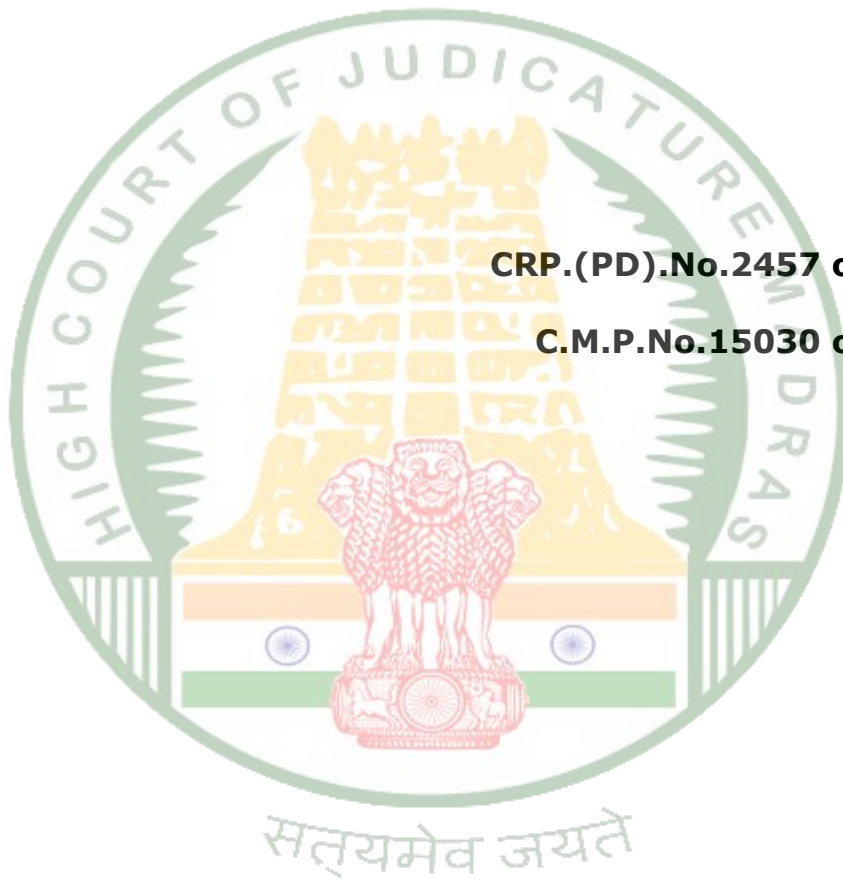
The Additional District Munsif,  
Poonamallee.



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**M.S.RAMESH.J,**

DP



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