

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4186 of 2015
and M.P.No.1 of 2015

Arjunan Rav

.. Petitioner

Vs.

S.Jayalakshmi

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair and decretal order dated 05.10.2015 made in I.A.No.5986 of 2015 in O.S.No.3005 of 2014 on the file of the XIII Assistant City Civil Court, Chennai.

For Petitioner : Mr.L.Rajasekar

For Respondent : Mr.S.Suresh Kumar

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 05.10.2015 made in I.A.No.5986 of 2015 in O.S.No.3005 of 2014 on the file of the XIII Assistant City Civil Court, Chennai.

2.The petitioner is the defendant and respondent is the plaintiff in O.S.No.3005 of 2014 on the file of the XIII Assistant City

<http://www.judis.nic.in> Civil Court, Chennai. The respondent filed the said suit for

mandatory and permanent injunction. The petitioner did not appear and he was set exparte on 04.08.2014 and exparte decree was passed on 15.12.2014. The respondent filed E.P.No.745 of 2015 to execute the decree. The petitioner filed the present I.A.No.5986 of 2015 under Section 5 of Limitation Act to condone the delay of 177 days in filing the petition to set aside the exparte decree. According to the petitioner, he received suit summons from the Court and as he was not aware of the Court proceedings, he could not appear before the Court on 04.08.2014 and give vakalat to his counsel and failed to inform the counsel about his inability to attend the Court. He was informed about the exparte decree only on 03.03.2015 and his absence on 04.08.2014 is neither wilful nor wanton, but due to the reasons stated above.

3.The respondent filed detailed counter affidavit and opposed the said application. According to the respondent, the petitioner was aware of the proceedings and failed to appear on 24.06.2014 to 08.12.2014 for 10 hearings and an exparte decree was passed on 15.12.2014. The petitioner filed I.A.No.13918 of 2014 to set aside the exparte order dated 24.06.2014 and the said application was dismissed on 17.11.2014. Mean while, the respondent filed I.A.No.16425 of 2014 for punishing the petitioner for disobeying the order of interim injunction granted in I.A.No.8490 of 2014 and

submitted that petitioner has not given any sufficient and valid reason for condoning the delay of 177 days in filing the application and prayed for dismissal of the application.

4.The learned Judge considering the averments in the affidavit, counter affidavit and the fact that I.A.No.13918 of 2014 filed by the petitioner to set aside the exparte order was dismissed on 17.11.2014 for default and petitioner has not taken any steps to restore the same and did not appear before the Court for 10 hearings from 24.06.2014 to 08.12.2014, dismissed the application.

5.Against the said order of dismissal dated 05.10.2015 made in I.A.No.5986 of 2015 in O.S.No.3005 of 2014, the petitioner has come out with the present Civil Revision Petition.

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

7.The learned counsel appearing for the petitioner reiterated the averments in the affidavit filed in support of the above application and grounds raised in the revision.

8.Considering the materials available on record, counter affidavit and typed set of papers filed by the learned counsel for the respondent, it is seen that apart from the present suit, there are other proceedings and criminal complaint given against the petitioner by the respondent and Criminal O.P filed by the petitioner in this Court for Anticipatory Bail and Contempt Petition initiated by the respondent are pending. The contention of the learned counsel for the petitioner that the petitioner did not know the Court proceedings and therefore, he did not appear and engage an Advocate on the date of hearing is without merits. It is not the contention of the learned counsel for the petitioner that petitioner is an illiterate person. Apart from first hearing, on 24.06.2014, the suit was adjourned on 10 occasions. The petitioner also filed I.A.No.13918 of 2014 to set aside the exparte order dated 24.06.2014 and the same was dismissed on 17.11.2014 for default. In the present application, the very same reason is given and the petitioner has not sought for setting aside the exparte decree.

9.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.

10. At the same time, Courts must consider whether the intention of party is bonafide and not malafide. The petitioner should not be dragging on the proceedings and the other party should not be prejudiced. The learned Judge considering all the above facts, dismissed the application by giving cogent and valid reason. In view of the well settled principle, there is no irregularity or illegality in the order passed by the learned trial Judge dated 05.10.2015 made in I.A.No.5986 of 2015 in O.S.No.3005 of 2014 warranting interference by this Court.

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

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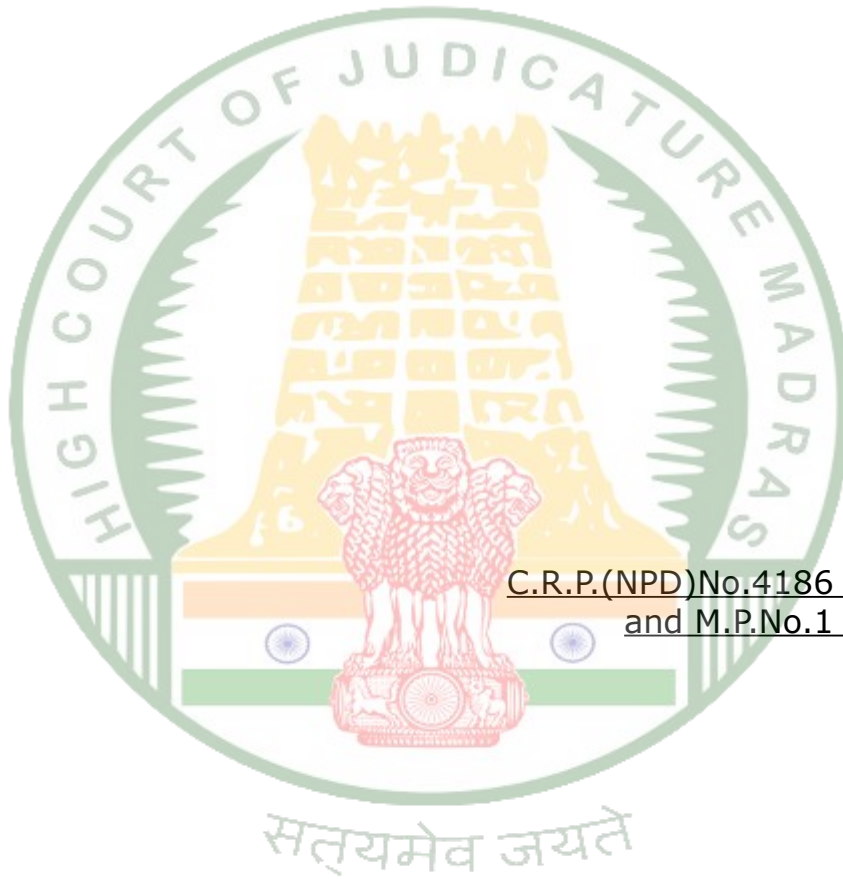
Index :: Yes/No
gsa

To

<http://www.judis.nic.in> The XIII Assistant City Civil Judge,
Chennai.

V.M.VELUMANI,J.

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