

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.03.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (NPD) No.663 of 2018

1. Sekar
2. Murugan
3. Mannangatti @ Paranthaman Petitioners

Versus

Iyappan @ Venkatesh ... Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the order in I.A. No.922 of 2016 in O.S. No.1555 of 2013, dated 21.07.2017 passed by the Learned I Additional District Munsif, Pondicherry.

For Petitioners : Mr.Jaikumar

For Respondent : Mr.T. Ananthasekar

ORDER

सत्यमेव जयते

The respondent, as plaintiff has instituted the suit in O.S. No.1555 of 2013 for bare injunction to restrain the revision petitioners / defendants from in any manner interfering with his possession on the western side of the suit property while putting permanent fence. In the said suit, the revision petitioners / defendants did not appear to contest the suit, therefore, the Court below passed an ex-parte judgment and decree on 18.08.2014. On the strength of the ex-parte

decree and judgment, the respondent / plaintiff also filed E.P. No.23 of 2015 to execute the decree. At this stage, the revision petitioners / defendants have filed I.A. No.922 of 2016 to condone the delay in filing the application to set aside the ex-parte decree, dated 18.08.2014 and I.A. No.921 of 2016 to set aside the ex-parte decree and judgment dated 18.08.2014. The Court below by the order dated 21.07.2017 refuse to condone the delay of 778 days in filing the application to set aside the ex-parte decree dated 18.08.2014, thereby dismissing I.A. No.922 of 2016 in O.S. No.1555 of 2013. Aggrieved by the same, the present revision petition is filed.

2. The main contention urged by the learned counsel for the revision petitioners that they were not served notice in the suit. The revision petitioners were not aware of the pendency of the suit and that the ex-parte decree has been passed without affording sufficient opportunity to them to defend the suit. Thus, according to the revision petitioners, the ex-parte decree and judgment is in violation of the principle of natural justice. On that ground, the petitioners sought for setting aside the impugned order. It is further contended that the Court below did not consider the bonafide reasons assigned by the revision petitioners for condonation of the delay and therefore, the learned counsel for the revision petitioners prayed for setting aside the impugned order of the Court below.

3. Per contra, the learned counsel for the respondent would oppose the revision petition, by contending that the trial Court, in exercise of its discretionary power, has rightly refused to condone the delay in filing an application to set aside the ex-parte decree and judgment. Further, the reasons assigned by the revision petitioners for condonation of the delay is not satisfactory. The revision petitioners have assigned vague and bald reasons to condone the inordinate delay of 778 days. In any event, such an application has been filed by the revision petitioner after receipt of notice in the suit as well as in the execution petition and that the revision petition lacks bonafide. Therefore, the learned counsel for the respondent prayed for dismissal of the Civil Revision Petition.

4. I heard the learned counsel for both sides and perused the materials placed on record. At the outset, it is seen from the order passed by the Court below that the trial Court has rendered a specific finding that the defendants have entered appearance through a counsel on 27.09.2013. Even though the suit was listed for hearing on several occasions, the defendants did not choose to contest the suit. On 22.02.2014, the suit was listed finally for the appearance of the

defendants. However, there was no representation on behalf of the defendants. Ultimately on 23.06.2014, the revision petitioners were set ex-parte, thereafter the suit was posted for recording of ex-parte evidence on 23.07.2014 and 04.08.2014. After recording of ex-parte evidence on 18.08.2014, the suit was decreed ex-parte. Admittedly, the defendants have engaged the counsel to defend the suit. It is also an admitted fact that the defendants did not file the written statement. However, in the application seeking to condone the delay, it is stated that due to non availability of records relating to the patta proceedings, they could not file the written statement. Such an averment cannot be countenanced. The non availability of records cannot be a ground or a bar for the defendants to file their written statement. When the suit was posted for hearing on several occasions, the defendants did not avail those opportunity, to file the written statement. As regards, the reasons stated by the revision petitioners for condonation of delay, it is seen that the application for condonation of delay has been filed without any valid or strong reasons to condone the huge delay of 778 days. It is settled preposition of law that the length of delay is not material for condonation of delay, but the reasons assigned thereof. Applying the above principle to the facts of the present case, this Court is of the view that the reasons assigned by the revision petitioners for condonation of delay is not valid and the Court below is right in refusing to condone the delay. In such view of the matter, this Court feels that the order of the Court below needs no interference and

consequently, the revision petition deserves only to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs.

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Index : Yes/No

Internet : Yes / No

Speaking/Non Speaking

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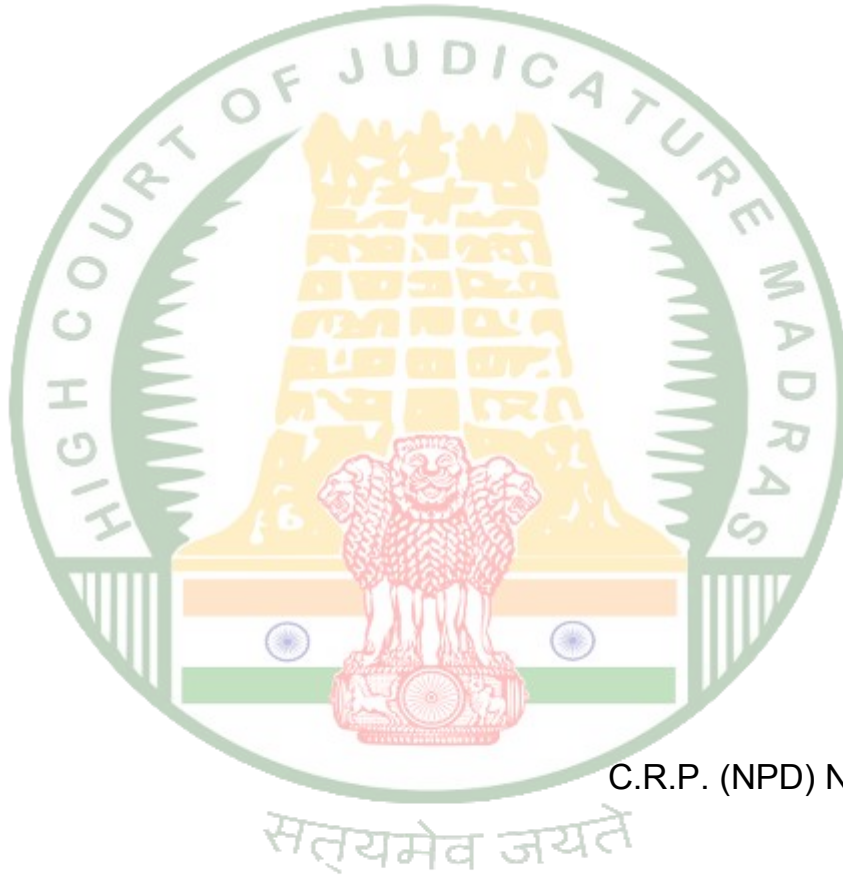
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D.KRISHNAKUMAR, J.

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