

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.2.2018

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.150 of 2016 and C.M.P.No.755 of 2016

1 K.Chandra
2 K.Kamala

... Petitioners

Vs

1 L.Devarajan
2 L.Damodharan

... Respondents

This Civil Revision Petition is filed under Section 115 of C.P.C. against the order, dated 10.06.2015 made in I.A.No.382 of 2014 in O.S.No.523 of 2006 on the file of the II Additional District Munsif, Coimbatore.

For Petitioner : Mr.R.Rajarajan
Respondent : Mr.S.B.Viswanathan

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ORDER

According to the petitioner, the suit in O.S.No.523 of 2006 has been filed by the respondents against the petitioners herein for recovery of

possession. In the aforesaid suit, the petitioners were set exparte and exparte decree was passed. Petitioner has filed an application in I.A.No.382 of 2014 to condone the delay of 606 days in filing the application to set aside exparte decree. The said application was dismissed by the court below. Challenging the aforesaid order, the present Civil revision petition is preferred before this Court.

2 The learned counsel for the petitioner would submit that the petitioner was not given opportunity to put forth his case to adjudicate the matter on merits in the suit and no prejudice would be caused to the petitioners, if the said application is allowed. There shall be liberal approach while dealing with the application for condoning the delay in filing the application to set aside the exparte decree. Therefore, the order of the court below is liable to be set aside.

3 Per contra, the learned counsel for the respondent would submit that the petitioner has to show sufficient reason to condone the inordinate delay in filing the application to set aside the exparte decree. Further, the calculation of the petitioner in counting the days of delay is not correct. According to the respondent, the delay is more than 1514 days. Therefore, the court below has rightly dismissed the said application.

4 On perusal of the affidavit filed by the petitioner, the petitioner has not stated sufficient reason for condoning the delay. When such inordinate delay in filing the set aside application, the petitioner has to give sufficient reason for non appearance before the trial court on the date of hearing before the trial court. Except by stating that the petitioner unable to contact his counsel to file an application under Order 9 Rule 13 C.P.C. Therefore, the petitioner has not given sufficient cause to condone the delay in filing the application. In the absence of sufficient cause for condoning the delay, the court below has rightly dismissed the application.

5 In **DOHIL CONSTRUCTIONS CO. (P) LTD. VS. NAHAR EXPORTS LTD.**, [(2015) 1 SCC 680], the Hon'ble Supreme Court has held as under:

"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

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utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered."

In the light of the decision of the Hon'ble Supreme Court cited supra, this Court is not inclined to interfere with the order passed by the court below.

6 In fine, the Civil revision petition fails and dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

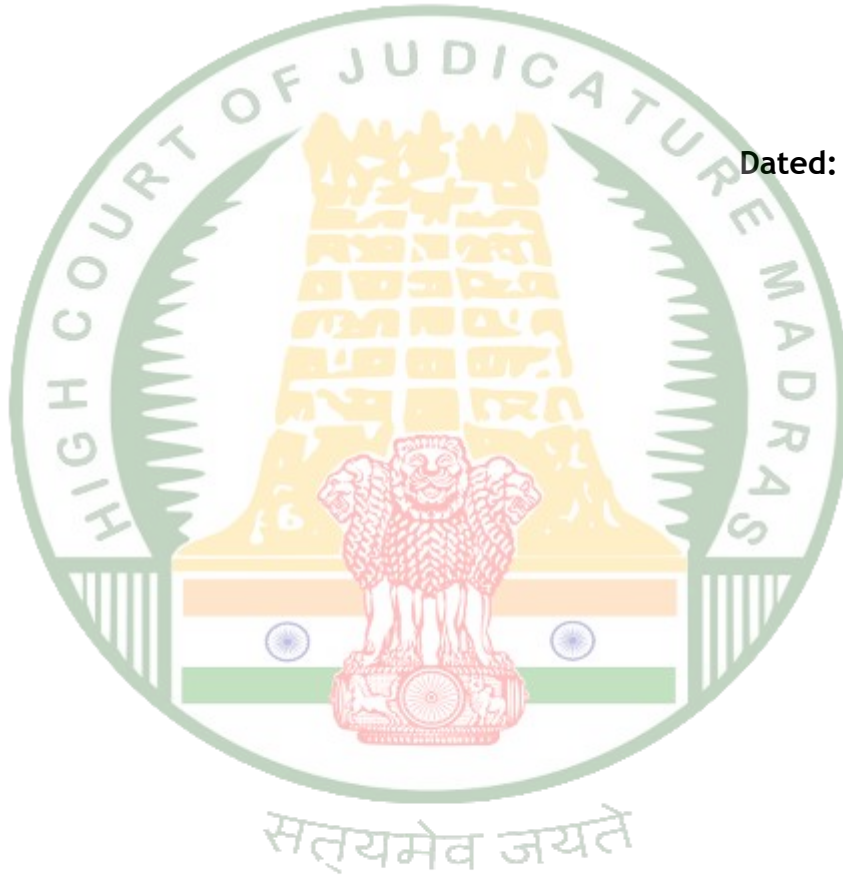
26.02.2018

Speaking/Non Speaking order
Index: Yes/No
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To
The II Additional District Munsif, Coimbatore.

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