

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.2.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD) No.205 of 2016 and C.M.P.No.1066 of 2016

Susaiammal (Deceased)

1 David @ Raju

2 Selvaraj

3 Pushpam

4 Rose Meri

.... Petitioners/Defendants 2 to 5

Vs.

A.Govindasamy

.... Respondent/Plaintiff

This Civil Revision Petition is filed under Section 115 of C.P.C. against the order, dated 12.10.2015 made in I.A.No.403 of 2015 in O.S.No.114 of 2008 on the file of the Subordinate Judge, Krishnagiri.

For Petitioner No.2 : Mr.S.Anil Sandeep

For Petitioners 1, 3 & 4 : No appearance

For Respondent : Mr.C.Prabakaran

ORDER

According to the petitioner, the respondent has filed a suit in O.S.No.114 of 2008 against the petitioners for specific performance. Thereafter, the suit was adjourned for several times for filing written

statement. However, there was no representation on behalf of the petitioners and hence, exparte decree was passed on 11.11.2008. The petitioner has filed an application in I.A.No.403 of 2015 for condoning the delay of 2051 days in filing the set aside application. The said application was dismissed by the court below. Challenging the aforesaid order, the present Civil revision petition has been preferred by the defendants in the suit.

2 According to the learned counsel for the petitioners, an opportunity was not given to the petitioners to put forth their case to adjudicate the matter on merits in the suit and no prejudice would be caused to the petitioner if the said application is allowed. There shall be liberal and pragmatic 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. In support of his contention, he placed reliance on the decision of the Hon'ble Supreme Court in ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others [2013 (5) CTC 547 (SC)]***, wherein the Hon'ble Supreme Court has held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation of delay. Therefore, the order passed by the court below is liable to be set aside.

3 The learned counsel for the respondent would submit that the petitioner is not vigilant enough to defend the case. The petitioner was set exparte and an exparte decree was passed on 11.11.2008. The petitioner has not stated sufficient reason to condone the inordinate delay of 2051 days in filing the set aside application. Therefore, the court below has rightly dismissed the application.

4 On perusal of records, it is very clear that the petitioner has not stated sufficient reason for condoning the inordinate delay of 2051 days in filing the set aside application. 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

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

5 In the facts and circumstances of the case and in the light of the judgment of the Hon'ble Supreme court cited supra, there is no error or illegality in the order passed by the court below. Therefore, there is no warrant to interfere with the order of the court below.

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

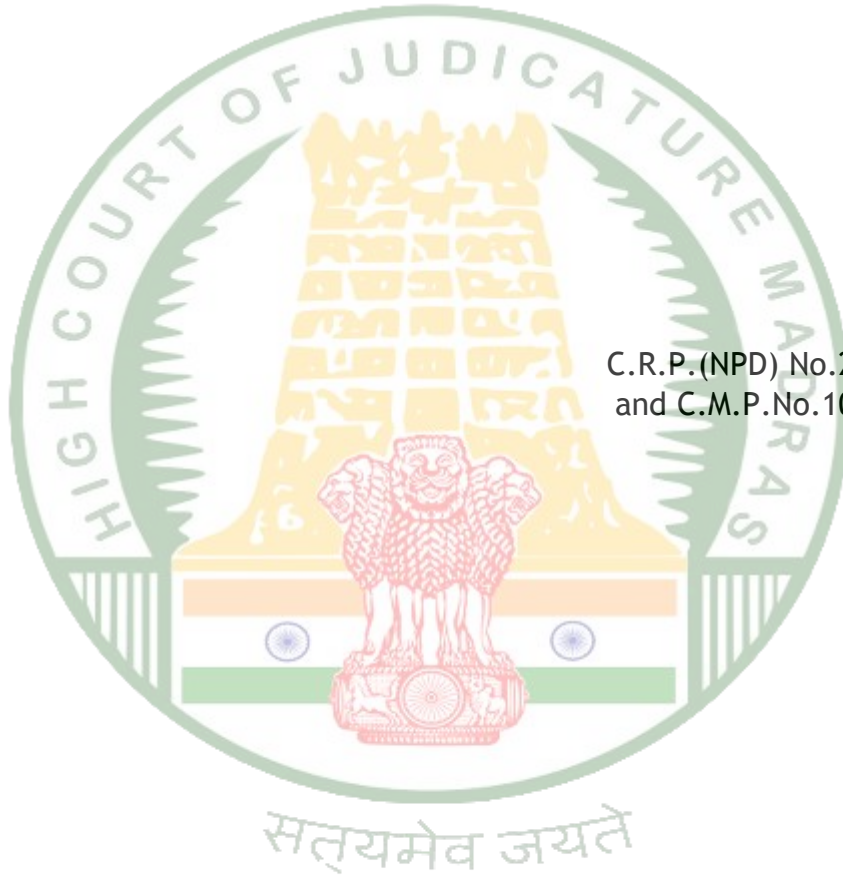
26.02.2019

Speaking /Non Speaking order
Index: Yes/No
vaan

To
The Subordinate Judge, Krishnagiri.

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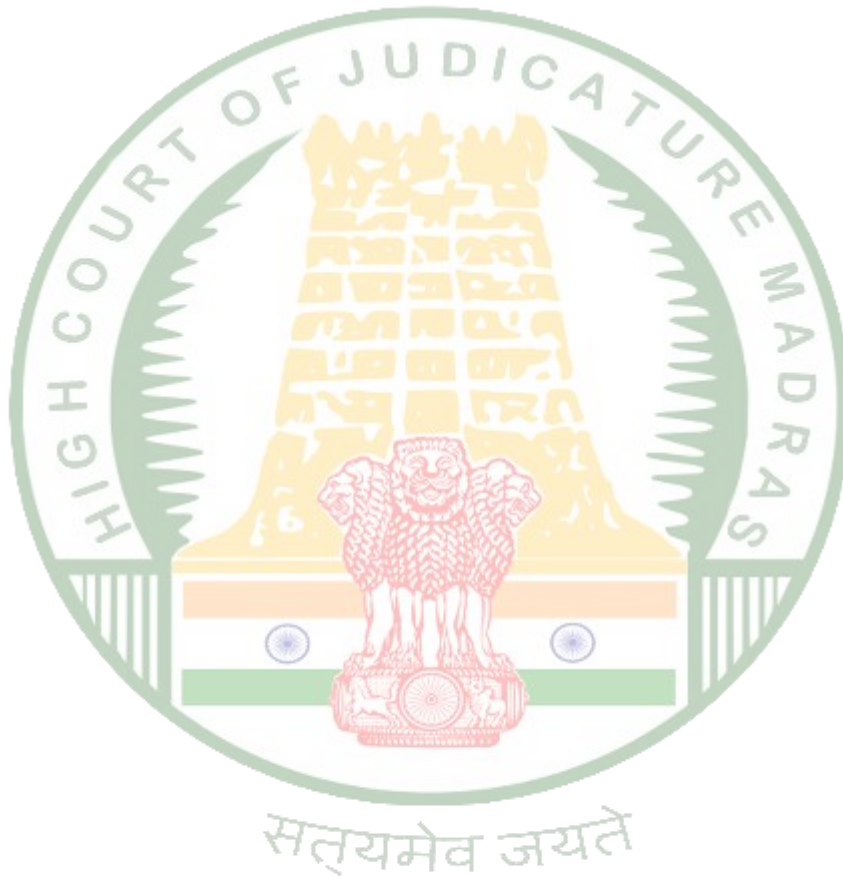
D.KRISHNAKUMAR,J.
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