

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.(NPD).Nos.2603 & 2605 of 2016

and

C.M.P.No.13409 of 2016

Sampath

... Petitioner in both CRPs'

Vs.

1.Rajangam

2.Manohari

3.Selvi

4.Anusuya

5.Ganesan

6.Akila

... Respondents in both CRPs'

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order passed in unfilled I.A.No.109 of 2015 in O.S.No.88 of 2012 dated 16.02.2016 on the file of the Subordinate Court, Mannargudi.

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order passed in unfilled I.A.No.242 of 2014 in I.A.No.251 of 2013 in O.S.No.88 of 2012 dated 16.02.2016 on the file of the Subordinate Court, Mannargudi.

For Petitioner : Mr.R.Rajaraman
For R1 : Mrs.P.T.Ramadevi
For R2 : Given up

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COMMON ORDER

These Civil Revision Petitions are filed to set-aside the fair and final order of the learned Subordinate Judge, Mannargudi made in unfilled I.A.No.109 of 2015 and I.A.No.242 of 2014 in I.A.No.251 of 2013 in O.S.No.88 of 2012 dated 16.02.2016.

2.According to the petitioner, the respondents/plaintiffs filed a suit in O.S.No.88 of 2012 on the file of the Sub Court, Mannargudi for specific performance and a separate possession. In the aforesaid suit, the petitioner was set ex-parte. The petitioner has filed the Interlocutory Applications in I.A.Nos.109 of 2015 and 242 of 2015 under Section 5 of the Limitation Act to condone the delay of filing the petition to set aside the exparte decree. It is contended by the petitioner that the counsel who appeared for the petitioner was ill-health and he was taking treatment at the hospital and therefore, he could not file the written statement and therefore, the exparte decree was passed.

3. According to the learned counsel for the petitioner, due to the aforesaid reasons, the petitioner was not able to submit his written statement and an opportunity has to be given to the petitioner to adjudicate the matter on merits in the said suit.

4. The learned counsel appearing for the respondent would submit that the reasons stated for the delay is not sufficient and the trial court rightly dismissed the application. On a perusal of the reasons stated in the affidavit filed by the petitioner is that the counsel for petitioner has suffered from illness, therefore, he is unable to submit his written statement.

5. Therefore, in the light of the decision rendered by the Hon'ble Supreme Court in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others*** reported in ***(2013) 12 Supreme Court Cases 649***, wherein Hon'ble Supreme Court of India has held that:

"21.9. (ix) the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go

by in the name of liberal approach.

21.11(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation."

6. In fine, these Civil Revision Petitions stand allowed on payment of cost of Rs.2,500/- to the respondents within a period of four weeks from the date of receipt of a copy of this order and the Court below is also directed to dispose of the suit as expeditiously as possible. Consequently, the connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

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To

The Subordinate Judge,
Mannargudi.

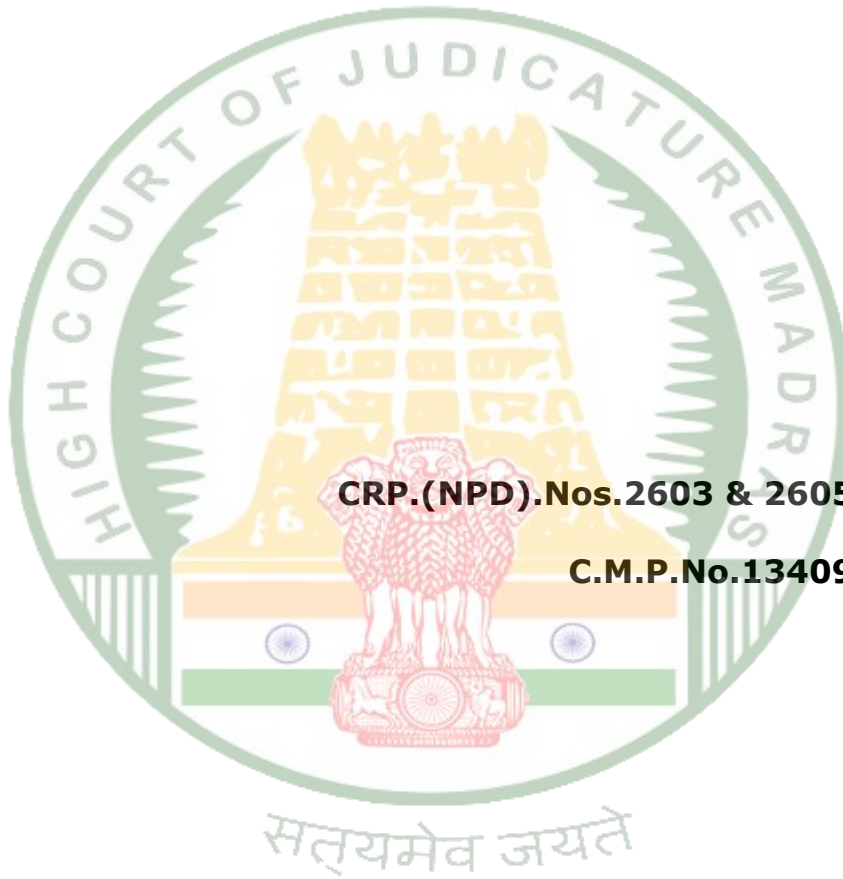
15.03.2018

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D.KRISHNAKUMAR.J,

ah



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