

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P. (NPD) No.2824 of 2016

and

C.M.P Nos.14336 of 2016 & 2281 of 2017

1. S.K. Rajan Babu
2. S.M. Avinash
3. Jayashree Pyarilal
4. Subahsini Santaprakash
5. Shalini Biswajit
6. S.M. Amardeep
7. Priya Ajit
8. S.R. Sherina
9. S.R. Sabrina
10. Asha Prabhakar
11. Anitha Rajarajan
12. Amudha Ganesh

.. Petitioners

Vs

1. K.R. Rajaram
2. A. Rajamani
3. S. Sujatha

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order dated 29.07.2016 in I.A. No.17075 of 2015 in O.S. No.1610 of 2010 on the file of VII Assistant City Civil Court at Chennai and pass further orders.

For Petitioners : Mr. P. Sankar

For Respondents : Mr. B.S. Jothiraman for R1

Mr. J. Nandagopal for R2 & R3

ORDER

This revision petition arises against the fair and decretal order dated 29.07.2016 in I.A. No. 17075 of 2015 in O.S. No.1610 of 2010 on the file of VII Assistant City Civil Court at Chennai.

2. The learned counsel for the petitioners would submit that the 1st respondent herein, filed a suit in O.S. No.1610 of 2010. Since no vakalat was filed on behalf of the defendants 1 to 12, on 18.10.2010, the petitioners herein were set exparte by the trial court and the case was proceeded as against the remaining defendants. The suit was finally disposed of, on 16.07.2014. The petitioners have filed I.A. No.17075 of 2015 to condone the delay of 343 days in filing the application to set aside the exparte decree dated 16.07.2014. The petitioners have also filed an application in I.A. No.17077 of 2015 to set aside the ex-parte decree dated 16.07.2014. Common counter affidavit was filed by the 1st respondent and by a common order dated 29.07.2016, the court below

dismissed the aforesaid applications. Challenging the same, the present revision petition has been filed before this Court.

3. According to the petitioners, the 1st respondent has filed the suit for specific performance and for refund of the advance amount. The reasons given by the petitioners is that the previous counsel engaged his junior Mr.L. Shanmuga Sundaram, who misplaced the bundle and did not proceed with the case. Due to some personal inconvenience, the petitioners also failed to ask their counsel to follow up the case. This resulted in passing of the ex-parte decree. Without considering the said bonafide reasons, the court below has dismissed the applications.

4. Per contra, the learned counsel for the first respondent would submit that the petitioners were not vigilant to prosecute the case and the reasons stated in the affidavit were not satisfactory and hence the court below has rightly dismissed the applications.

5. The reasons stated in the affidavit for the delay is that the junior counsel who appeared at that time, had misplaced the case

bundle and therefore could not conduct the case. The stage of the case was not communicated to the petitioners. Further, the petitioners also, due to some personal difficulty did not contact the counsel to make necessary follow up. However, dismissal of the application would cause miscarriage to the petitioners and cannot be compensated by way of money. Therefore, an opportunity to be given to the petitioners to agitate the case on merits. Following the decision of the Hon'ble Supreme Court in the case of ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.***, reported in **(2013) 12 SCC 649**, a liberal, pragmatic, justice-oriented, non- pedantic approach has to be taken while dealing with an application for condonation of delay. Hence, the order passed by the court below is liable to be set aside. However, the delay can be compensated by imposing heavy cost.

6. Considering the facts and circumstances of the case, the fair and decreetal order dated 29.07.2016 passed in I.A. No.17075 of 2015 in O.S. No.1610 of 2010 by the VII Assistant City Civil Court at Chennai is set aside, on condition that the petitioners shall pay a sum of

Rs.10,000/- to the first respondent, on or before 06.02.2018.

7. The Civil Revision Petition is allowed, on the above terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Post on 08.02.2018, for reporting compliance.

24.01.2018

Index : Yes/ No

[Issue order copy on 29.01.2018]

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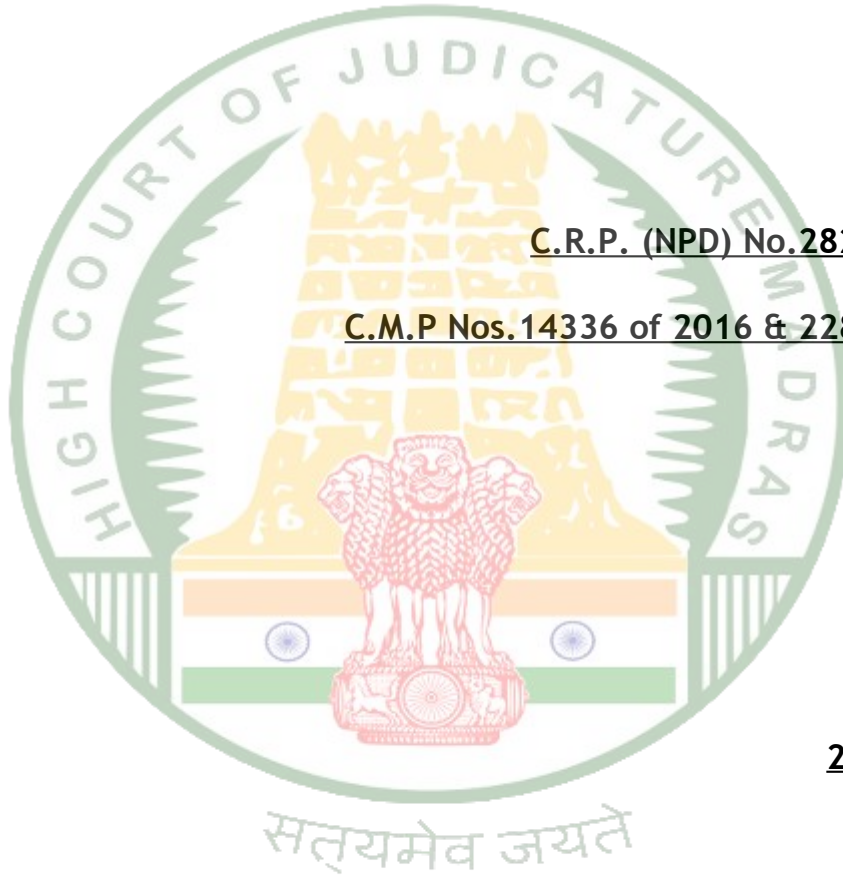
The VII Assistant City Civil Court
Chennai .



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D. KRISHNAKUMAR J.,

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