

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.2449 to 2451 of 2013
& M.P.Nos.1 to 1 of 2013

Soundaram (died)
2.T.Stanley Johns
3.T.Dhinakaran
3.Suganthi
4.Inbakaram
5.Shantha Ruby
6.T.Devakumar

.. Petitioners in all
C.R.Ps.

K.Ganesan
K.Murugesan
K.K.Thiyagarajan

Vs.

.. Respondent in
C.R.P.No.2449/2013
.. Respondent in
C.R.P.No.2450/2013
.. Respondent in
C.R.P.No.2451/2013

COMMON PRAYER: Civil Revision Petitions filed under Section 115 of C.P.C to set aside the fair and decretal order dated 26.02.2013 made in I.A.Nos.526 to 528 of 2012 respectively in O.S.Nos.1370, 1373 and 1376 of 1999 on the file of the Principal Subordinate Court, Coimbatore.

For Petitioners : Mr. S.Kumaresan

For Respondent : Mr. Bharath Kumar

COMMON ORDER

These Civil Revision Petitions are filed to set aside the fair and decretal order dated 26.02.2013 made in I.A.Nos.526 to 528 of 2012 respectively in O.S.Nos.1370, 1373 and 1376 of 1999 on the file of the Principal Subordinate Court, Coimbatore.

2.The petitioners and the issues involved in all the Civil Revision Petitions are one and the same and therefore, they are disposed of by this common order.

3.The petitioners are the defendants and the respondent in each of the Civil Revision Petition is the plaintiff respectively in O.S.Nos.1370, 1373 and 1376 of 1999 on the file of the Principal Subordinate Court, Coimbatore. The respondents in each of the Civil Revision Petitions filed three different suit against the petitioners for specific performance of agreement of sale dated 25.08.1998. All the suits were decreed exparte on 02.09.2005. The petitioners filed applications to condone the delay in filing the petitions to set aside the exparte decree dated 02.09.2005. The said applications were returned for rectifying certain defects on 17.04.2006. Those

applications were not re-presented in time. The petitioners filed applications I.A.No.526 of 2012 in O.S.No.1370 of 1999, I.A.No.527 of 2012 in O.S.No.1373 of 1999 and I.A.No.528 of 2012 in O.S.No.1376 of 1999 to condone the delay of 1232 days in re-presenting the applications filed under Section 5 of the Limitation Act to condone the delay in filing the petitions to set aside the exparte decree dated 02.09.2005. According to the petitioners, after returning the applications, the same got mixed up with other bundle in the office of their Advocate and therefore, the applications could not be re-presented in time. The delay is neither wilful nor wanton.

4.The respondents filed separate counter affidavits and contended that the suits filed by the respondents is for specific performance of agreement of sale entered into in the year 1998. The suit was decreed exparte twice and on applications filed by the petitioners, the said exparte decree were set aside. Again the petitioners were set exparte and exparte decree was passed on 02.09.2005. The respondents have filed E.P to execute the decree. At this stage, the petitioners have come out with the present applications only to drag on the proceedings and prayed for dismissal of the applications.

5.The learned Judge considering the averments in the

affidavits and counter affidavits, dismissed the applications holding that petitioners have not given sufficient reason to condone the delay.

6. Against the said orders of dismissal dated 26.02.2013 made in I.A.Nos.526 to 528 of 2012 respectively in O.S.Nos.1370, 1373 and 1376 of 1999, the petitioners have come out with the present three Civil Revision Petitions.

7. Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

8. All the three suits are filed by the respondent in each of the three Civil Revision Petitions for specific performance of agreement of sale. The suits were decreed ex parte and petitioners have filed applications to set aside the ex parte decree with condonation of delay of 32 days. The applications were returned and the petitioners did not re-present the same within the time given by the Trial Court. The petitioners have re-presented the applications on 15.09.2009 along with the present applications. According to the petitioners, the applications filed to condone the delay in filing the petitions to set aside the ex parte decree after return, got mixed up with other

bundle in their Advocate's office. The learned counsel for the respondent submitted that this is the third time the suits were decreed exparte and the petitioners are not diligent enough to put forth their case on merits. Considering the fact that the suits are for specific performance of agreement of sale and the papers got mixed up with other bundle in the Advocate's office, the petitioners must be given an opportunity to contest the case on merits.

9. In view of the fact that the suits have been decreed exparte for third time, the petitioners must be put on cost, so that they diligently conduct the case in future, all the three Civil Revision Petitions are allowed on condition that the petitioners pay a sum of Rs.2,500/- each to the respondent respectively in all the three Civil Revision Petitions within a period of two weeks from the date of receipt of a copy of this order. On such compliance, the learned Judge is directed to dispose of the applications filed under Section 5 of the Limitation Act to condone the delay in filing the petitions to set aside the exparte order and proceed further as expeditiously as possible.

10. In the result, all the three Civil Revision Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

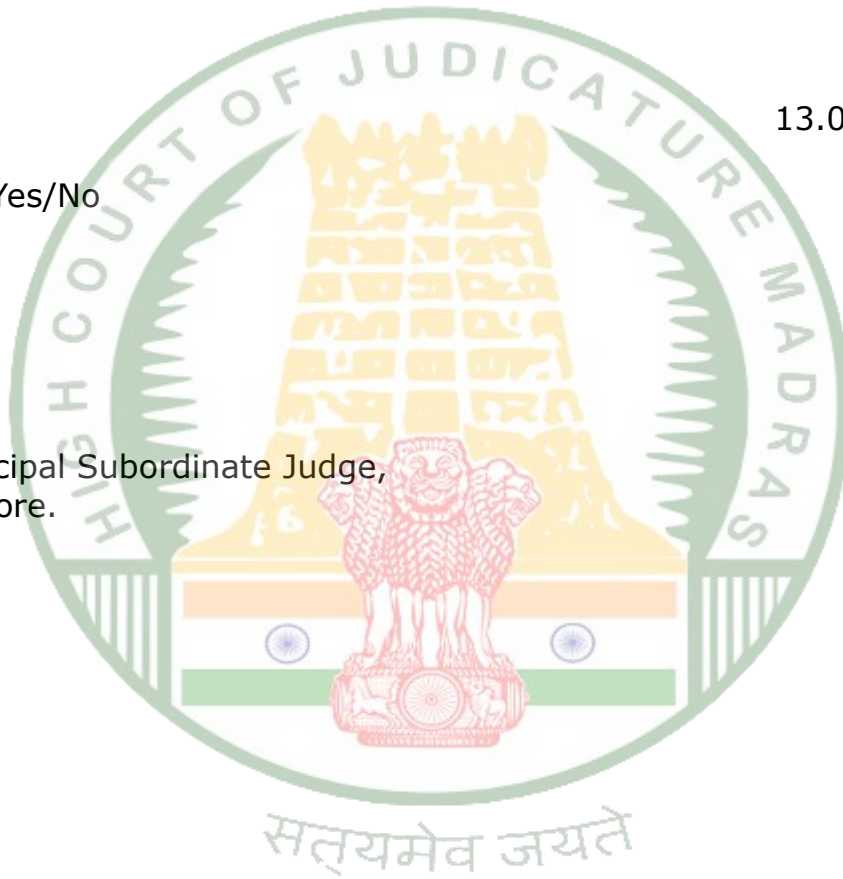
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Index : Yes/No

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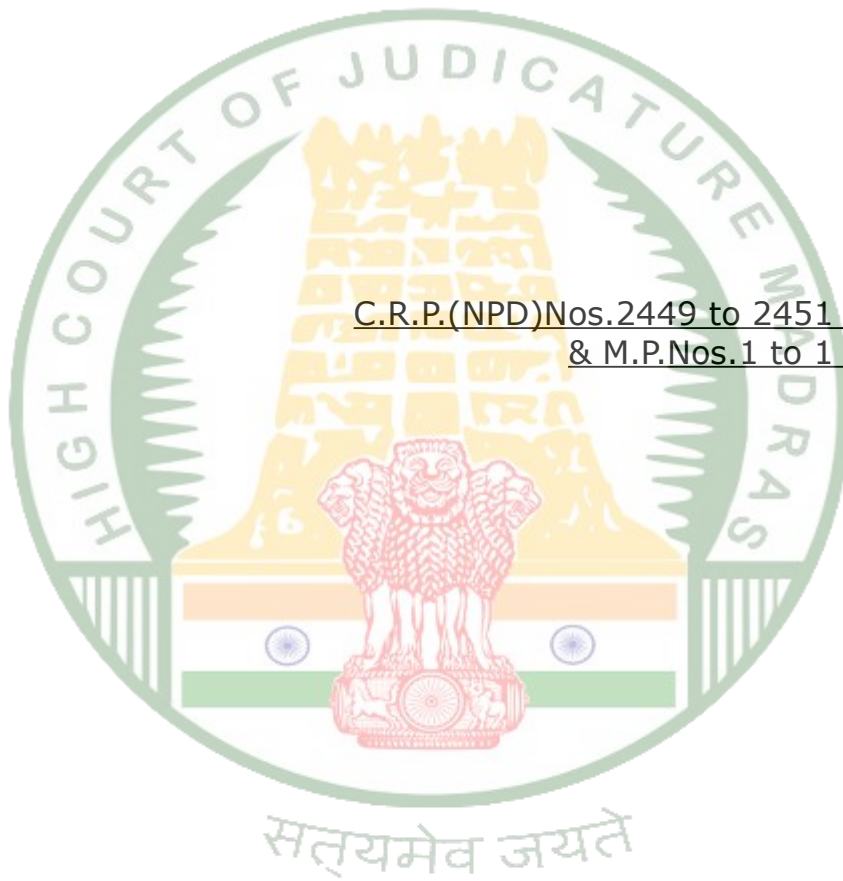
The Principal Subordinate Judge,
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V.M.VELUMANI,J.

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