

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 1.3.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD) No.580 of 2016 and C.M.P.No.2990 of 2016

Vishnu Vijay

... Petitioner

Vs.

B.R.Krishnakumar

... Respondent

This Civil Revision Petition is filed under Article 227 of Constitution of India against the order, dated 28.10.2015 made in I.A.No.330 of 2012 in O.S.No.959 of 2003 on the file of the Principal District Munsif, Coimbatore.

For Petitioner

: Mr.K.S.Karthik Raja

For Respondent

: Mr.N.Ishtiaq Ahmed

ORDER

सत्यमेव जयते

According to the petitioner, the respondent has filed a suit in O.S.No.959 of 2003 for permanent injunction against the petitioner herein. In the aforesaid suit, exparte decree was passed on 7.11.2003. The respondent has filed E.P.No.101 of 2010 to execute the exparte decree passed against the petitioner herein. Thereafter, the petitioner has filed an application to set

aside the exparte decree along with condone application in I.A.No.330 of 2011 to condone the delay of 455 days in filing the application to set aside exparte decree. However, the court below dismissed the application. Challenging the dismissal order, the petitioner has filed the present Civil revision petition before this Court.

2 According to the petitioner, exparte decree passed in the aforesaid suit has not been communicated to the petitioner by the counsel appeared for the petitioner, before the court below. When it was came to the knowledge of the petitioner, the petitioner has filed the instant application in I.A.No.330 of 2011 to condone the delay along with an application to set aside the exparte decree. However, without giving opportunity to the petitioner to contest the suit on merit, the court below dismissed the I.A.No.330 of 2011 by stating that the petitioner has not satisfied the court for condoning the inordinate delay in filing the set aside petition. Therefore, the order passed by the court below is liable to be set aside.

3 Per contra, the learned counsel for the respondent vehemently objected by stating that the delay in filing the application is more than 2609 days. The petitioner has stated in the affidavit that there is delay of 455 days in filing the set aside application. Therefore, the order of the court below is sustained and the Civil revision petition is liable to be dismissed.

4 Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials on record.

5 Admittedly, the instant application has been filed by the petitioner to condone the delay of 455 days in filing the set aside application. But on verification of records, petitioner was set exparte and exparte decree was passed on 7.11.2003. The reason stated in the affidavit filed in support of the application is that erstwhile counsel has not communicated the date of hearing to the petitioner resulting in exparte decree has been passed. Further, it is stated that the petitioner is a partner in jewellery business. The petitioner has not stated sufficient reason to condone the delay. Further, as rightly pointedly out by the counsel for the respondent, the delay in filing the application is not from the date of notice, but from the date of exparte decree passed by the court below. There is no satisfactory reason stated in the affidavit filed by the petitioner for the inordinate delay of 2609 days in filing the application to set aside the exparte decree.

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6 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."

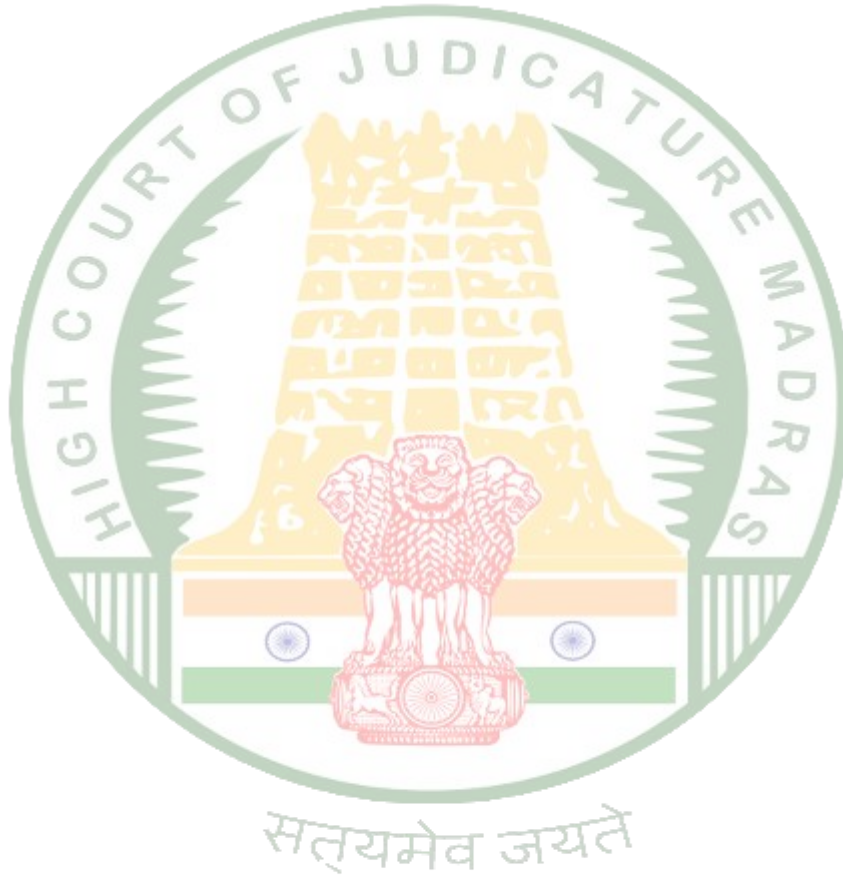
In the light of the decision of the Hon'ble Supreme Court cited supra, this Court is not inclined to interfere with the order passed by the court below.

7 In fine, the Civil revision petition fails and the same is dismissed accordingly. No costs. Connected miscellaneous petition is closed.

1.3.2018

Speaking/Non Speaking order
Index: Yes/No
vaan

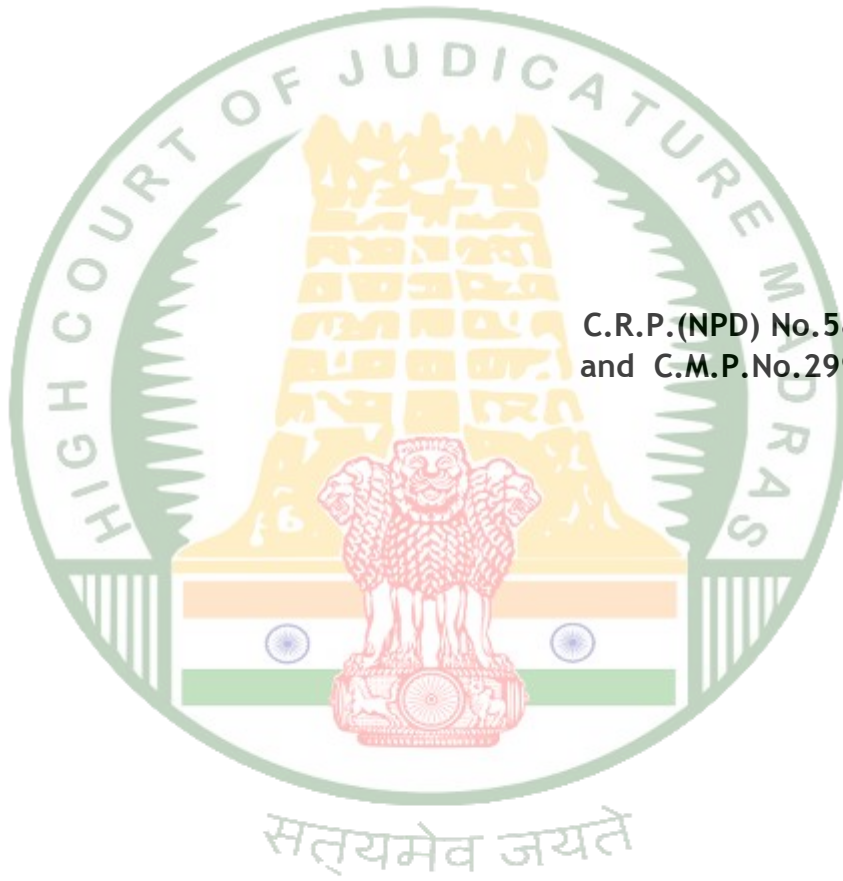
To
The Principal District Munsif, Coimbatore.



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D.KRISHNAKUMAR,J.

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