

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated: 1.3.2018****CORAM****THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR****C.R.P.(NPD) No.643 of 2016 and C.M.P.No.3326 of 2016**

Elumalai

...

Petitioner/Defendant

Vs.

Ayyanar

...

Respondent/Plaintiff

This Civil Revision Petition is filed under Article 227 of Constitution of India against the order, dated 12.10.2015 made in I.A.No.395 of 2013 in O.S.No.150 of 2009 on the file of the Principal Sub Judge, Villupuram.

For Petitioner

: Mr.R.Balakrishnan

For Respondent

: Mr.S.Krishnasamy

ORDER

सत्यमेव जयते

According to the petitioner, the respondent has filed a suit in O.S.No.150 of 2009 for specific performance against the petitioner herein. In the aforesaid suit, exparte decree was passed on 29.04.2010. Thereafter, the petitioner has filed an application to set aside the exparte decree along with the application in I.A.No.395 of 2013 to condone the delay of 1037 days in

filing the set aside application and the same was dismissed. Hence, the petitioner has preferred the present Civil revision petition before this Court.

2 According to the learned counsel for the petitioner, petitioner was suffering from jaundice and therefore, he was unable to appear before the trial court on the hearing date. Without giving opportunity to the petitioner to contest the suit on merit, the trial court dismissed the application. 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 of the court below is liable to be set aside.

3 Per contra, the learned counsel for the petitioner vehemently objected by stating that the petitioner has not produced any materials before the trial court to substantiate his claim and there is no sufficient reason given by the petitioner to condone the inordinate delay of 1037 days in filing the set aside application. Pursuant to the exparte decree passed, the respondent has filed E.P.No.103 of 2010 to execute the decree and notice also has been received by the petitioner in the said E.P. Thereafter, E.P.No.103 of 2010 was

allowed and sale deed was executed in favour of the respondent. Again, the respondent has filed E.P.No.98 of 2013 for delivery of suit property. The said application was also allowed. Ameena has taken possession of the suit property in accordance with law. At this stage, the petitioner has filed the instant application to condone the inordinate delay of 1037 days in filing the set aside application. Therefore, the trial court has rightly dismissed the application 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 From the germane of facts of this case, exparte decree was passed on 29.4.2010 and subsequently, the respondent/plaintiff has filed E.P.No.103 of 2010 and the same was allowed. Consequently, sale deed was executed in favour of the respondent/plaintiff. Thereafter, E.P.No.98 of 2013 was filed for delivery of possession. Pursuant to the order passed in E.P.No.98 of 2013, the Court Ameena has taken possession of the suit property and the same was also recorded by the court below. Delivery warrant has been returned to the court below. At this stage, without showing sufficient reason or produced any materials to substantiate his claim, the instant application has been filed to condone the inordinate delay of 1037 days in filing the set aside application.

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."

7 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.

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

1.3.2018

Speaking/Non Speaking order

Index: Yes/No

vaan

To

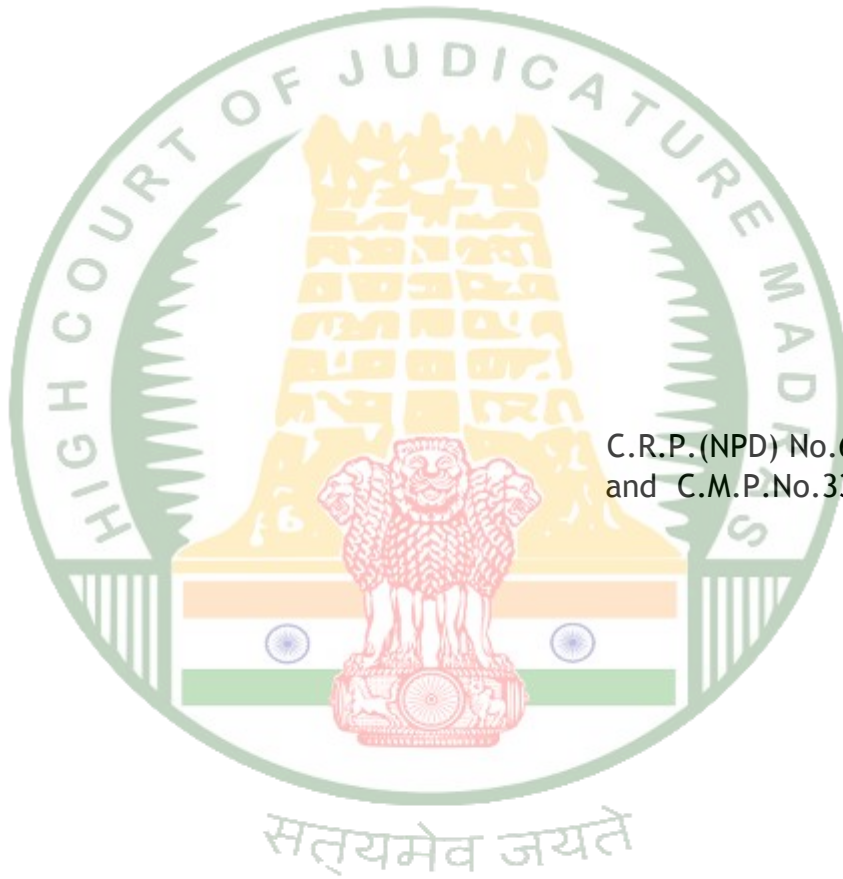
The Principal Sub Judge, Villupuram.



WEB COPY

D.KRISHNAKUMAR,J.

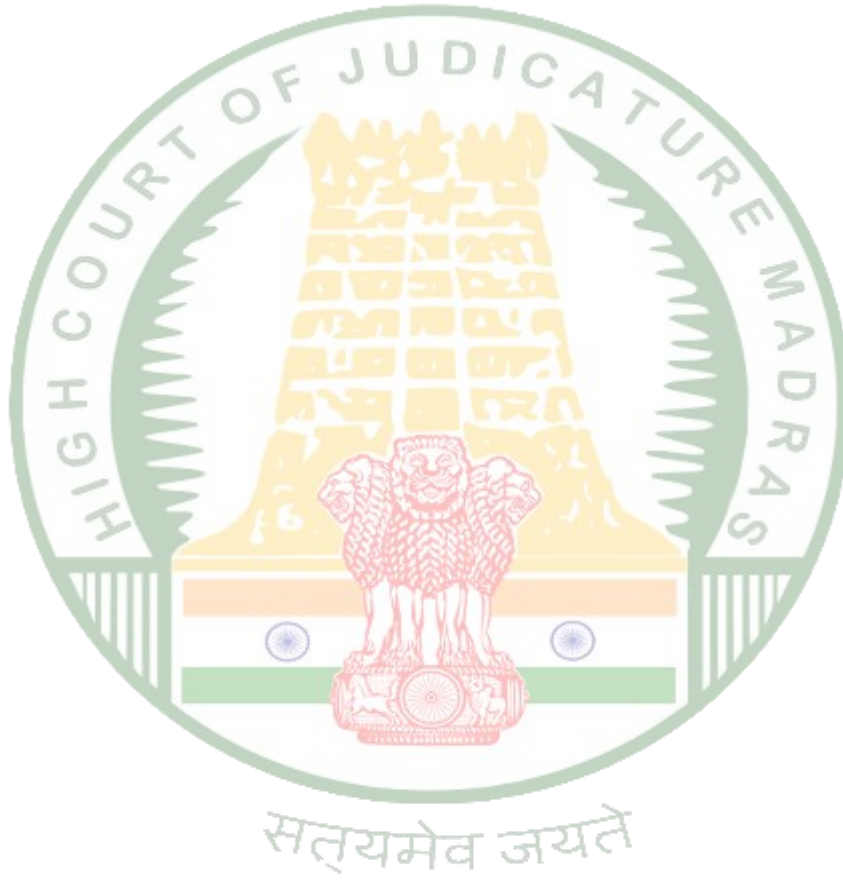
vaan



C.R.P.(NPD) No.643 of 2016
and C.M.P.No.3326 of 2016

WEB COPY

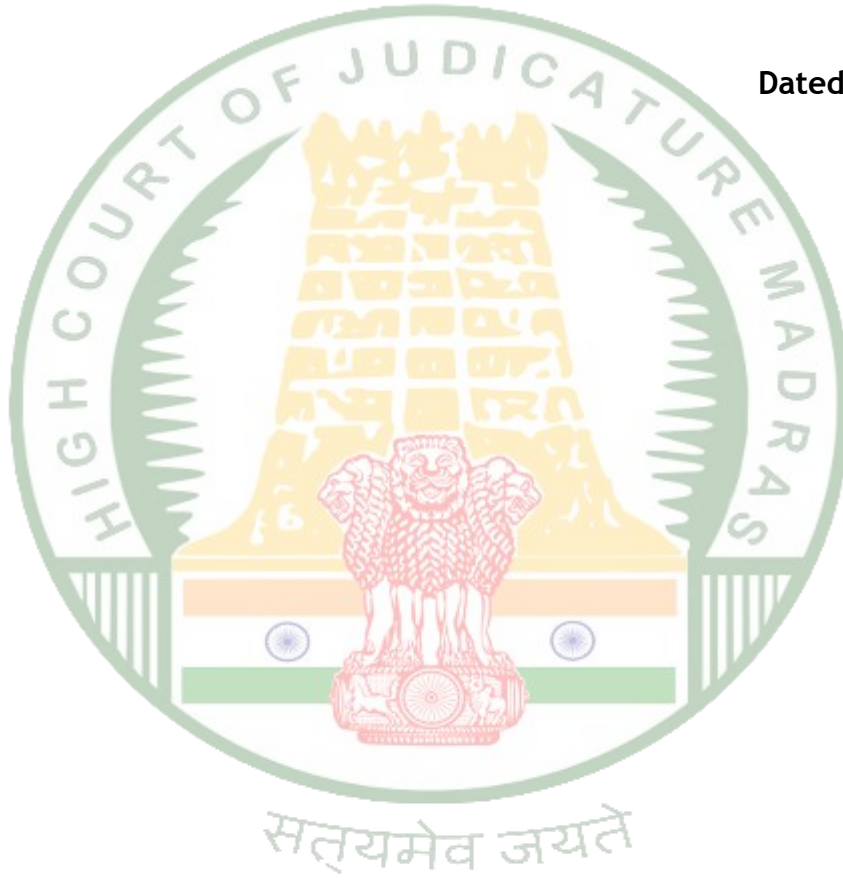
Dated: 1.3.2018



WEB COPY

**C.R.P.(PD) No.576 of 2016
and C.M.P.No.5058 of 2016**

Dated: 7.2.2018



WEB COPY