

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

CORAM

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

CRP.(NPD).No.679 of 2016

and

CMP.No.3478 of 2016

1.Arjunan

2.Periyasamy

3.Rani

4.Silambarasan

5.Shanmughavalli

..Petitioners/Defendants

Vs.

Vadivel

..Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order passed in I.A.No.366 of 2013 in O.S.No.42 of 2009 dated 02.07.2015 on the file of the Court of District Munsif Cum Judicial Magistrate of Pochampalli.

For petitioners : Mr.N.E.A.Dinesh

For Respondent : No appearance

* * * * *

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order passed in I.A.No.366 of 2013 in O.S.No.42 of 2009

dated 02.07.2015 on the file of the Court of District Munsif Cum Judicial Magistrate of Pochampalli.

2.The respondent/plaintiff filed a suit for permanent injunction against the petitioner herein. The petitioners were set ex-parte on 20.02.2004 and subsequently thereafter Ex-parte decree passed on 03.02.2010. The petitioners filed an Interlocutory Application in I.A.No.366 of 2013 to condone the delay of 901 days in filing to set aside the Ex-parte decree. In the aforesaid suit, the petitioner contended that the vendor to these petitioners namely one Mariappan has preferred an appeal suit in O.S.No.23 of 2002. Against the Judgment and decree, the petitioners preferred an appeal suit and the said appeal suit was dismissed by the Court below. Further, they have not filed an appeal within the time prescribed under the Limitation Act. The petitioner was suffering from illness and thereafter, filed an application to condone the delay of 901 days to set aside the Ex-parte decree. Admittedly, the petitioners have not taken steps to file an application for more than five years and no particulars has been furnished by the petitioners.

3.Therefore, in the case of ***H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and Another***, reported

in **(2015) 1 SCC 680**, the Supreme Court has held as follows:

"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."

4. In the light of the above said facts and decision of the Hon'ble Supreme Court of India, there is no sufficient reasons stated in the

affidavit for condoning the inordinate delay, in filing an application to set aside the Ex-parte decree. Therefore, this Court is not inclined to interfere with the order of the Court below and there is no error or illegality in the impugned order passed by the Court below and the Civil Revision petition is liable to be dismissed.

5. In fine, the order in I.A.No.366 of 2013 in O.S.No.42 of 2009 dated 02.07.2015 passed by the District Munsif Cum Judicial Magistrate of Pochampalli is confirmed and therefore, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

07.03.2018

Speaking/Non-speaking order

Index :Yes/No

Internet :Yes/No

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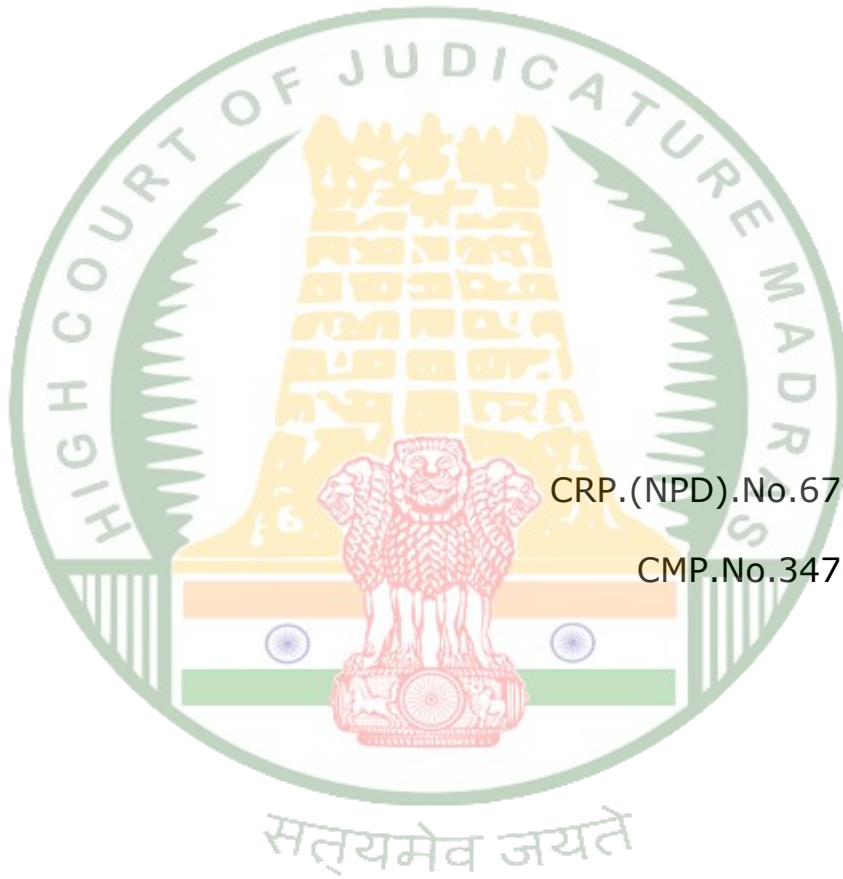
To

The District Munsif Cum Judicial Magistrate,
Pochampalli.

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D.KRISHNAKUMAR. J,

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