

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S. RAMESH

C.R.P(NPD) Nos.4108 & 4113 of 2018
and
CMP.No.22665 of 2018

1.Mr.S.Sivakumar

2.Mrs.S.Hemamalini

..Petitioners in both C.R.Ps

Vs

1.Mr.H.Mangalram

2.Mr.M.Puraram

3.Mr.Mahesh

4.Miss.Rekha

..Respondents in both C.R.Ps

5.Sri Rai & Co.,
Govt Auctioneers,
No.7, First Floor,
Sunkarama Chetty Street,
Chennai - 600 001.

..Respondents in
C.R.P.NPD.No.4113 of 2018

Prayer:- Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 30.10.2018 and 18.04.2018 passed in I.A.Nos.642 of 2018 & 777 of 2017 in O.S.No.142 of 2014 on the file of the II Additional District Judge, Thiruvallur at Poonamallee and allow the said I.A. by allowing the Civil Revision Petitions.

For Petitioners in both C.R.Ps :Mr.T.Thiyagarajan

For Caveater in both C.R.Ps :Mr.M.A.Srinivasan

COMMON ORDER

The suit in O.S. No. 142 of 2014 came to be dismissed for default on 13.07.2017 and to restore the said suit, the petitioners herein had filed an application along with I.A.No.777 of 2017 to condone the delay of 18 days in filing the restoration petition. The said I.A. was allowed on condition that the petitioners have to pay a sum of Rs.1000/- by way of cost to the respondents/defendants before 25.04.2018. Since the petitioners had failed to make the payment within time, they had filed I.A. No. 642 of 2018 seeking extension of time to pay the cost. The Court below had rejected the said application stating that the reason assigned by the petitioners for the nonpayment of cost within the stipulated time was not sufficient and acceptable. On a perusal of the affidavit filed in support of the application for extension of time, it is seen that the petitioners have stated that they were under the bonafide belief that the last date for payment of cost was 26.04.2018 and therefore, the cost was not paid on or before 25.04.2018.

2. When the Court below had exercised its discretion to restore

the suit, the delay in paying the cost may not be considered to be an inordinate delay and as such the same could have been considered

leniently.

3. The learned counsel for the petitioners submitted that he had approached the trial Court seeking for extension of time at the earliest point of time and therefore, the petitioners should be given one more opportunity to establish their case during the course of trial.

4. The learned counsel for the respondents in both revisions on the other hand submitted that the suit has been pending from the year 2014 onwards and that the above petitions have been filed only to drag on the proceedings with an ulterior motive.

5. In my view, a lenient approach could be adopted since the trial court had already exercised its discretion in allowing the application for restoration and the issue is only with regard to the payment of cost.

6. In the light of the above observations, the order dated 30.10.2018 passed in I.A.No.642/18 is set aside. Consequently, the petitioners are directed to pay a sum of Rs.10,000/- to the first respondent herein within a period of 7 days from the date of receipt of a copy of this order. The petitioners herein shall also file a memo evidencing such payment of cost within the time stipulated before the trial Court.

7. It is made clear that in case there is any delay in the time stipulated by this Court in payment of the cost of Rs.10,000/-, this order would stand automatically vacated and the earlier order of the Trial Court dated 30.10.2018 passed in I.A.No.642 of 2018 shall be revived, since the suit is pending from the year 2014 and is also posted in the special list when the suit came to be dismissed for default.

8. The delay of 18 days in filing the restoration petition stands condoned. The learned II Additional District Judge, Thiruvallur shall endeavour to dispose of the restoration application within a period of 30 days from the date of receipt of a copy of this order.

9. In view of the order passed by this Court today, the respondents shall not take any coercive action to bring the suit property for auction till the application to restore the suit is disposed of.

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10.Hence, the Civil Revision Petitions stand allowed in the above terms. Consequently connected miscellaneous petition is closed. No Costs.

17.12.2018

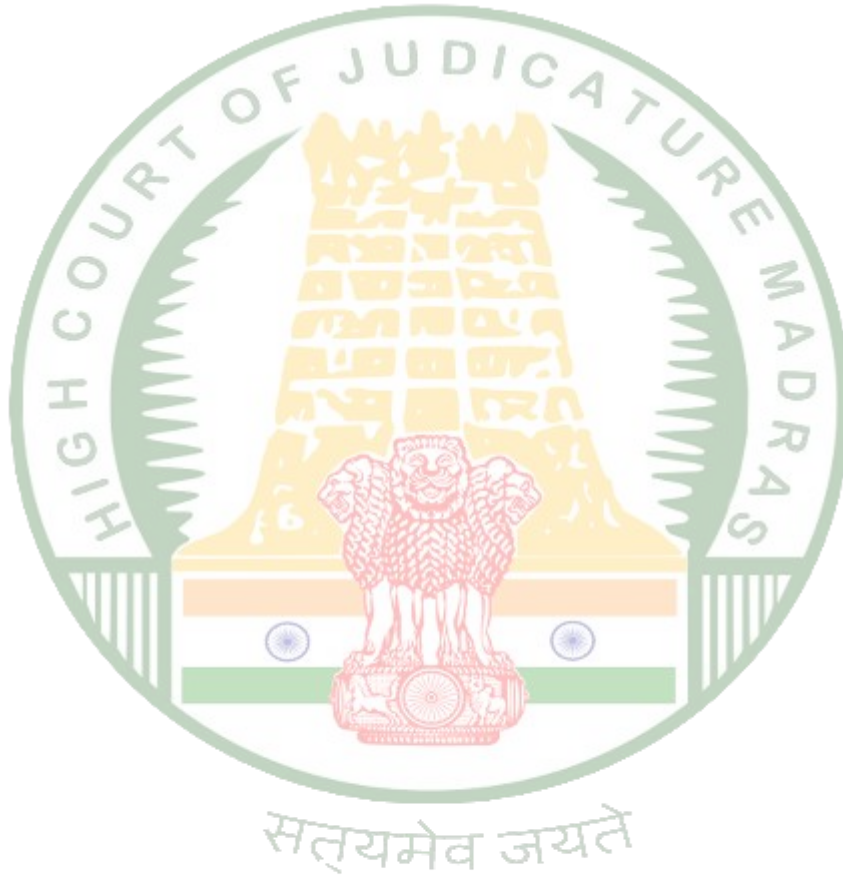
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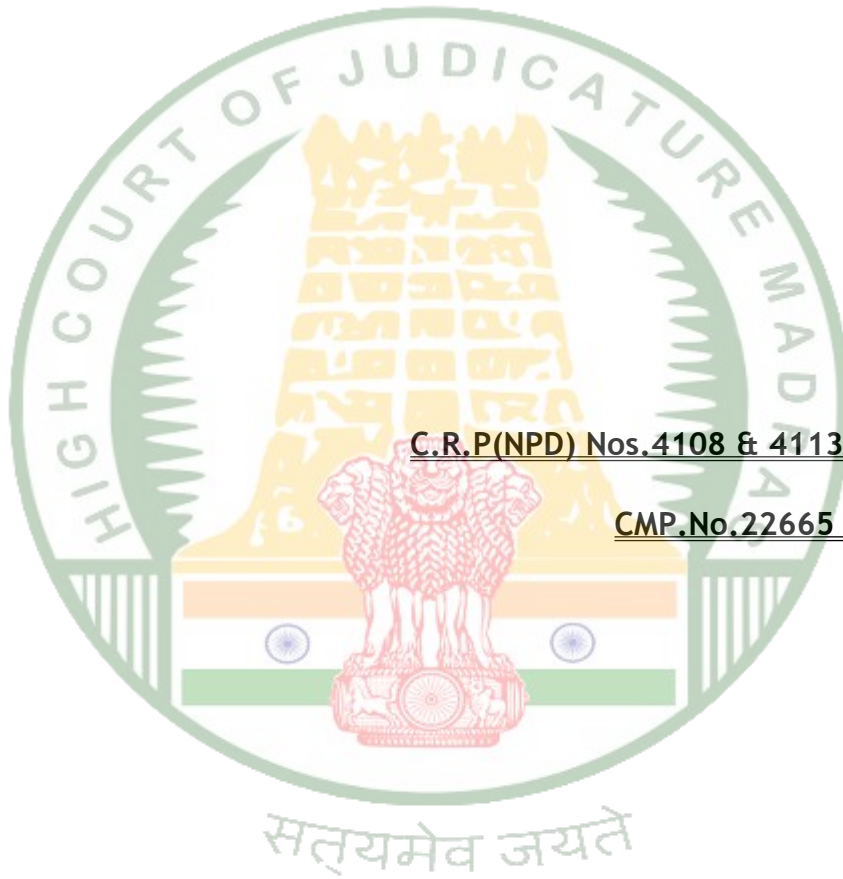
To
The II Additional District Judge,
Thiruvallur at Poonamallee.



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M.S. RAMESH.J.,

vsn/dh



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