

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.2144 of 2010
and M.P.No.1 of 2010

1.Saithoon Bee
2.MalikJhon
3.Abdual Raup

... Petitioners

Vs.

Shamim Unisha

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 08.08.2009 made in I.A.No.43 of 2009 in O.S.No.95 of 2000 on the file of the District Munsif cum Judicial Magistrate Court, Pennagaram.

For Petitioners : Mr.S.Saravanakumar
for M/s.M.Sudhakar

For Respondent : Not Ready in notice

ORDER

Challenging the fair and final order passed in I.A.No.43 of 2009 in O.S.No.95 of 2000 on the file of the District Munsif cum Judicial Magistrate Court, Pennagaram, the plaintiffs have filed the above Civil Revision Petition.

2.The plaintiffs filed the suit in O.S.No.95 of 2000 for specific performance.

3.Since the defendants failed to appear before the trial Court, an *exparte* decree was passed against them on 05.12.2002. Thereafter, the defendants filed an application in I.A.No.43 of 2009 to condone the delay of 1650 days in filing the application to set side the *exparte* decree. In the affidavit filed in support of the petition, the defendants have stated that they came to know about the *exparte* decree only when they received the summons in the execution proceedings and that no notice was served on them in the suit. The averments stated in the affidavit filed in support of the petition were disputed by the plaintiff in her counter. The trial Court, taking into consideration the case of both parties, dismissed the application stating that the averments stated in the affidavit are false. While dismissing the application, the trial Court took into consideration the endorsement made by the Bailiff in the summons wherein the Bailiff has stated that the defendants refused to receive the suit summons, hence, the same was affixed in the defendants' house.

4.Though the Bailiff has specifically stated that the defendants have refused to receive the summons and therefore, he affixed the summons on the door of the defendants' house, the defendants have not taken any steps to examine the Bailiff to prove that no notice was served on them. Mere averment in the affidavit cannot be accepted when the Bailiff has endorsed differently in the suit summons. When the burden is on the petitioners to establish that no notice was served, they failed to establish the averments stated in the affidavit filed in support of the petition by adducing proper evidence. Since the petitioners failed to give sufficient cause for the delay of 1650 days, the same cannot be condoned.

5.In the judgment reported in **(2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another]** the Hon'ble Supreme Court held that a party seeking for condonation of the delay should give sufficient cause.

6.The ratio laid down by the Hon'ble Supreme Court squarely applies to the facts and circumstances of the present case.

7.In the absence of sufficient cause shown by the defendants, the inordinate delay of 1650 days cannot be condoned. The trial Court has rightly

dismissed the petition. I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No
Speaking/Non-speaking order
va

26.09.2019

To

1.The District Munsif cum
Judicial Magistrate Court,
Pennagaram.

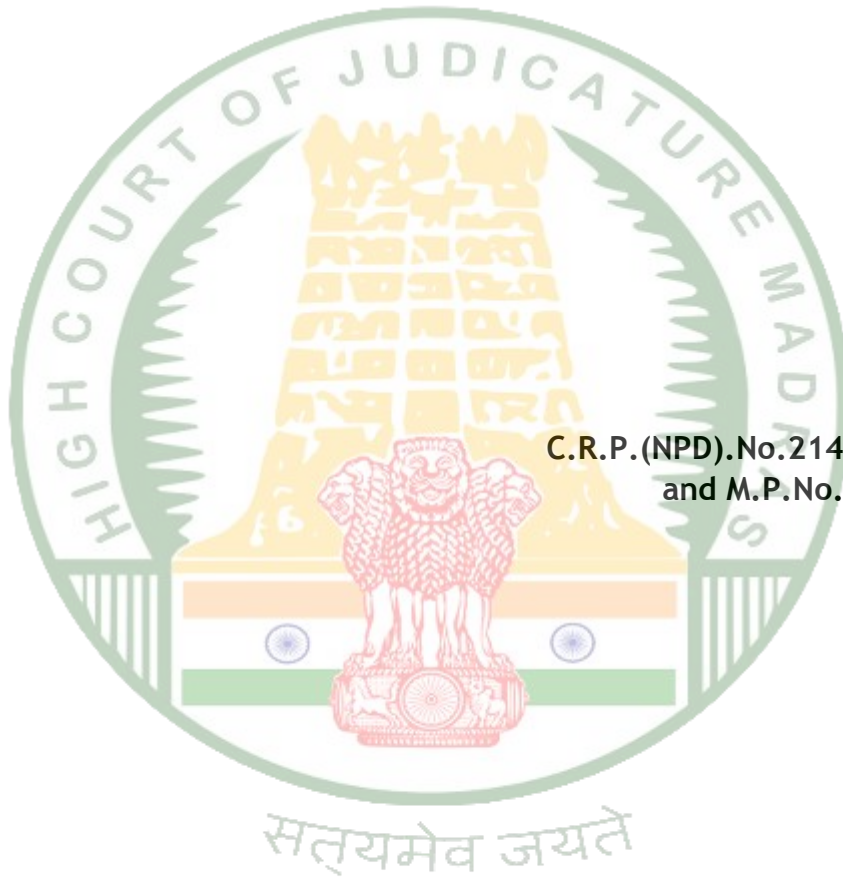


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M.DURAIWAMY,J.

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