

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Reserved on : 06.02.2019****Delivered on : 18.02.2019****Coram****The Honourable Ms.Justice P.T.ASHA****C.R.P.No.403 of 2019
C.M.P.No.2654 of 2019**

Gopaiya PalanimuthuPlaintiff/Appellant

Versus

Helanpaul ...Respondent

Civil Revision Petition is filed under Section 227 of the Constitution of India to set aside the fair and decretal order dated 20.08.2018 made in I.A.No.1122 of 2017 in I.A.No.1156 of 2014 in O.S.No.229 of 1999 on the file of the Learned Principal Sub Court, Namakkal by allowing this Civil Revision Petition.

For Appellant : Mr.N.Manokaran

J U D G M E N T

The above Civil Revision Petition is filed challenging the order of the Principal Sub Court, Namakkal in I.A.No.1122 of 2017 in I.A.No.1156 of 2014. The above application is filed to

condone the delay of 895 days in filing the petition to restore I.A.No.1156 of 2014, which was dismissed for default on 06.01.2015.

2. The brief facts which are essential for disposing of this Civil Revision Petition are as follows:

3. The revision petitioner is the defendant in the suit O.S.No.229 of 1999, filed by the respondent herein for specific performance of agreement of sale dated 09.08.1998. An ex-parte decree was passed on 22.04.2002. The respondent had filed Execution Proceedings in R.E.P.No.158 of 2003 and once again, the petitioner remind ex-parte even after receiving notice in the Execution Proceedings. Therefore, ex-parte order came to be passed.

4. Thereafter, it is seen that the petitioner had filed I.A.No.111 of 2007 to condone the delay of 1301 days in filing the petition to set aside the *ex-parte* decree. This was dismissed for default on 18.08.2008, on account of the fact that the

revision petitioner had failed to take notice to the respondent. The respondent was unable to register the sale deed in time before the Sub-Registrar and so the respondent had filed another Execution Proceedings in R.E.P.No. 45 of 2012, for execution of the sale deed. After entering appearance in the above matter, the petitioner filed yet another application for condoning the delay of 1467 days in filing the petition to restore I.A.No.111 of 2007, which was dismissed for default on 18.08.2008. This petition was also dismissed for default on 21.08.2014, as once again, the petitioner has not taken notice to the respondent. The petitioner filed yet another petition in I.A.No.1156 of 2014 to restore the petition in I.A.No.111 of 2007. This was also dismissed on 06.01.2015 and thereafter this petition I.A.No.1122 of 2017 has been filed to restore I.A.No.1156 of 2014 which is dismissed for default on 06.01.2015. This petition was dismissed by the learned Principal Subordinate Judge, Namakkal by order dated 20.08.2018. The petitioner has challenged the said dismissal order in this revision petition.

5. Heard Mr.Manoharan, learned counsel appearing for the

petitioners.

6. The only argument which has been put forward by the learned counsel is that the ex-parte judgment in O.S.No.229 of 1999 does not conform to the definition of a "judgment" and the various judgments pronounced by this Court, which makes it mandatory that even after the judgment is made *ex-parte*, the same should be a reasoned judgment.

7. There is no quarrel about this proposition. However, the conduct of the party who approaches this Court to condone the delay is also to be taken note of. The procrastination of the revision petitioner is evident from the following.

(i) 22.04.2002- ex-parte decree was passed.

(ii) 20.12.2017- I.A.No.111 of 2007 filed to condone the delay of 1301 days in filing the petition to set aside the ex-parte decree.

(iii) 18.08.2008-I.A.No.111 of 2007 dismissed for default.

(iv) I.A.No.815 of 2012 filed to condone the delay of 1467 days in restoring I.A.No.111 of 2007. On 21.08.2014, I.A.No.815 of 2012 dismissed for default.

(v) I.A.No.1156 of 2014 filed for restoring, I.A.No.815 of 2012, I.A.No.1156 of 2016 dismissed for default on 06.01.2015.

(vi) On 20.7.2017, I.A.No.1122 of 2017 was filed with the delay of 895 days in filing the restoration application for restoring I.A.No. 1156 of 2014 on 20.08.2018. I.A.No.1122 of 2017 dismissed for default.

8. Therefore, from the date of the decree, the revision petitioner has not evinced any interest in prosecuting the case and on the contrary, it appears to be a strategy aimed at ensuring that the decree holder does not enjoy the fruits of the decree.

9. It is also to be borne in mind that in case the impugned application is ordered, I.A.No.1156 of 2014 has to be considered and thereafter I.A.No.815 of 2012 has to be considered and finally I.A.No.111 of 2007 has to be considered. Such a move

would cause prejudice to the decree holder, who has filed the suit as early as in the year 1999 and 20 years down the line, he is still waiting in the corridors of the Court to enjoy the fruits of the decree. This Court cannot overlook the conduct of the revision petition.

10. Accordingly, this Civil Revision Petition is dismissed. The order in I.A.No.1122 of 2017 is confirmed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

18.02.2019

Index:Yes/No
Internet:Yes/No
Speaking Order/Non-speaking Order
ssb

To

The Principal Subordinate Judge,
Namakkal.

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P.T.ASHA, J.,

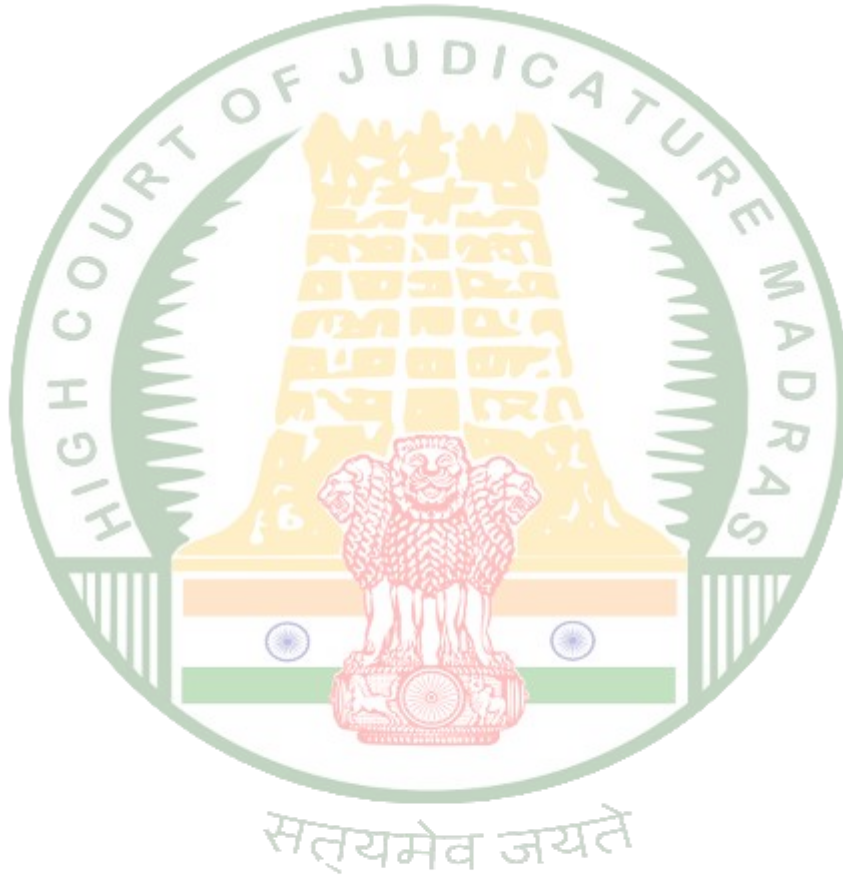
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Pre-Delivery Order in
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