

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.08.2019

Coram

The Honourable Mrs.**Justice R.HEMALATHA**

C.R.P.(NPD)No.2409 of 2011

and

M.P.No.1 of 2011

-

Smt.Saradha

... Petitioner

Vs.

Mrs.Lakshmi

... Respondent

This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 29.04.2011 passed in I.A.No.148 of 2011 in O.S.No.19 of 2008 by the learned Principal Sub Judge, Salem.

For Petitioner : Mr.S.Kalyanaraman

For Respondents : No appearance

ORDER

The present civil revision petition has been filed against the orders dated 29.04.2011 passed in I.A.No.148 of 2011 in O.S.No.19 of 2008 by the learned Principal Sub Judge, Salem.

2.The civil revision petitioner is the defendant in O.S.No.19 of 2008 on the file of the Principal Subordinate Judge, Salem. The respondents herein filed the suit, for recovery of a sum of Rs.1,35,900/- from the civil revision petitioner/defendant. In the plaint, the main allegation of the respondents/Plaintiffs is that at the time of executing a sale deed by the plaintiffs to the defendant, the defendant did not pay the entire sale consideration of Rs.1,35,900/- to them. The civil revision petitioner/defendant filed her written statement on 19.03.2008 denying all the allegations contained in the plaint in O.S.No.19 of 2008. It is specifically contended that the defendant paid a sum of Rs.1,35,900/- on the date of execution and registration of the sale deed dated 21.05.2007 in the presence of the witnesses and scribe. Therefore, the revision petitioner pleaded for dismissal of the suit. Subsequently, since the defendant did not appear before the learned Subordinate Judge, Salem, the suit was decreed exparte on 13.07.2009. Thereafter, the civil revision petitioner filed an application to set aside the exparte decree under Order IX Rule 13 along with a petition under Section 5 of the Limitation Act praying to condone the delay of 560 days in filing the petition to set aside the exparte decree. The learned Principal Sub Judge, Salem, after analysing the evidence on record, dismissed the said application in I.A.No.148 of 2011 vide his fair and decreetal

orders dated 29.04.2011. Aggrieved over the same, the present civil revision petition is filed.

3.Mr.S.Kalyanaraman, learned counsel appearing for the civil revision petitioner contended that when passing of sale consideration of Rs.1,35,900/- is indicated in the sale deed dated 21.05.2007, the trial Court was wrong in decreeing the suit, merely because the defendant did not appear before the Court. He also drew the attention of this Court to the judgment passed by the learned Principal Subordinate Judge, Salem in O.S.No.19 of 2008, wherein it is observed thus:-

"Heard the plaintiff's counsel. Perused records. Proof affidavit of PW1 is recorded and Ex.A1 to Ex.A7 are marked. Claim is proved. Suit is decreed as prayed for with costs."

Time and again, the Apex Court in various judgments has held that the trial Courts should not pass a cryptic order merely because the defendant did not appear before the Court.

4.In the instant case, the defendant had filed a written statement contending that the sale consideration was paid on the

date of execution and registration of the sale deed on 21.05.2007. The learned Principal Sub Judge, Salem did not even consider Section 91 and 92 of the Evidence Act, 1872 before passing Judgment in O.S.No.19 of 2008. As already observed the orders passed by the Principal Sub Judge, Salem is cryptic and cannot stand for a moment's scrutiny. As far as the present petition is concerned, the revision petitioner has filed an application to set aside the ex parte decree passed against him under Order IX Rule 13 of the Civil Procedure Code along with a petition under Section 5 of the Limitation Act praying to condone the delay of 560 days in filing the application under Order IX Rule 13 of the Civil Procedure Code. Refusing to set aside the condone delay petition can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. It is also pertinent to point out that every day's delay must be explained does not mean that a pedantic approach should be made. The doctrine must be applied in a pragmatic manner. The trial Court should have considered all these aspects before dismissing the petition filed by the petitioner in I.A.No.148 of 2011. Therefore, the civil revision petition is liable to be allowed and the orders passed by the learned Principal Sub Judge, Salem is set aside.

5.In the result, the civil revision petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed. Since the suit is of the year, 2008, the learned Principal Sub Judge, Salem is directed to dispose of the suit in O.S.No.19 of 2008 within a period of two months from the date of receipt of a copy of this order.

06.08.2019

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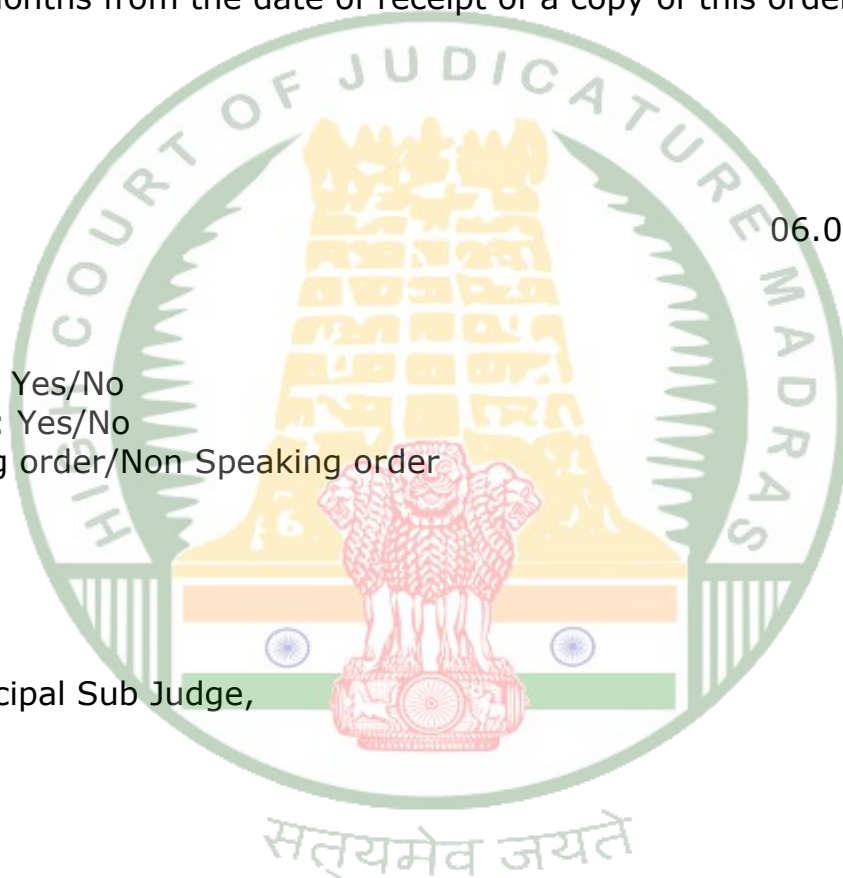
Index : Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

To

The Principal Sub Judge,
Salem.

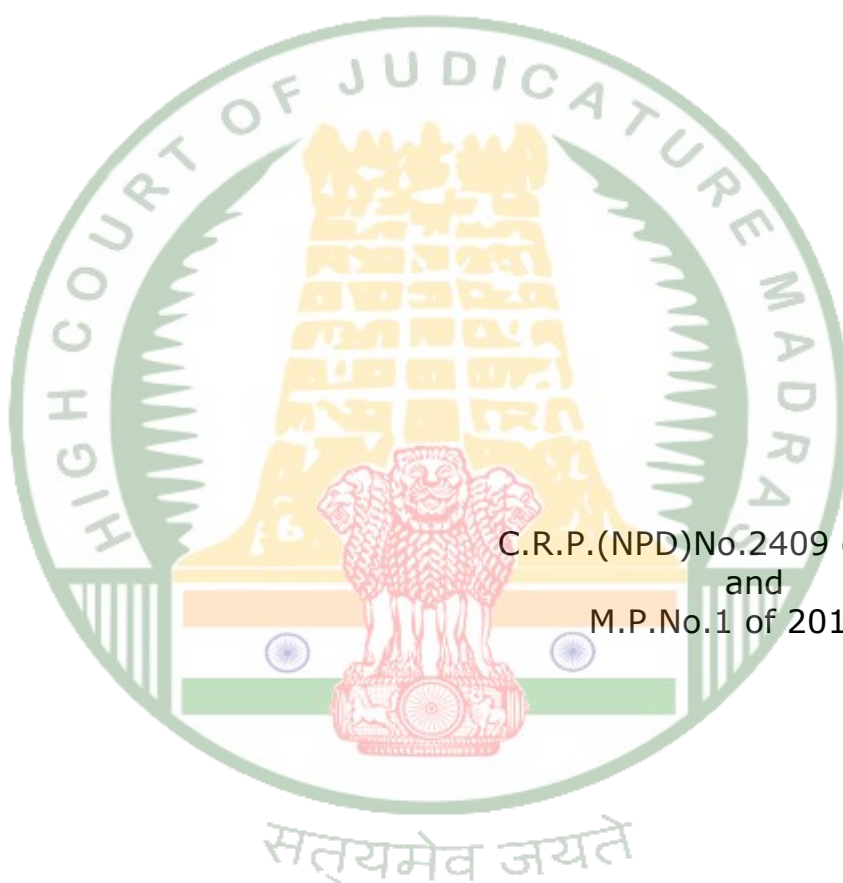


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