

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(NPD),No.1498 of 2015

1.T.D.Viswanathan
2.Lakshmi
3.Thara
4.Jayakumar
5.Ramesh
6.T.S.Sekar
7.M.Pushpa
8.M.Thirumurugan

... Petitioners

vs.

Shanthi

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 26.11.2014 made in E.A.No.3128 of 2014 in E.P.No.249 of 2006 in O.S.No.649 of 1977 on the file of the IX Assistant City Civil Court, Chennai.

For Petitioners : Mr.T.Easwaradhas

For Respondent : M/s.NA.Malai Saravanan

ORDER

The present Civil Revision Petition has been filed against the fair and decretal order dated 26.11.2014 passed by the IX Assistant City Civil Court, Chennai in E.A.No.3128 of 2014 in E.P.No.249 of 2006 in O.S.No.649 of 1977.

2. The petitioners are the decree holders in O.S.No.649 of 1977 which was decreed on 14.08.1981. The respondent and other defendants had preferred A.S.No.14 of 1982 which was dismissed on 22.11.1982.

3. Against the said judgment, the respondent and other defendants filed second appeal in S.A.No.1087 of 1983 which was also dismissed on 30.12.2003.

4. The petitioners therefore filed E.P.No.249 of 2006 during the month of September 2004 for taking delivery the vacant possession of the suit schedule property.

5. In the above proceedings, the respondent filed E.A.No.3570 of 2006 before the IX Assistant City Civil Court, Chennai under Section 47 of the Civil Procedure Code. By a fair and decretal order dated 01.11.2006 I.A.No.3570 of 2006 was dismissed.

6. The respondent had filed CRP (NPD) No.1829 of 2006 before this Court. By an order dated 22.1.2007, this Court held that the Execution Court had rightly dismissed the application filed under section 47 of CPC by the respondent and further held that the order dated 01.11.2006 did not

suffer from any serious infirmity. Meanwhile, SLP.No.23873 of 2008 was filed by the respondent before the Hon'ble Supreme Court. It was admitted on 23.11.2011.

7. However on 30.1.2014, E.P.No.249 of 2006 was dismissed as the petitioners had not paid the Batta for the issue of fresh warrant was ordered on 4.10.2013. The petitioners claim to have paid the Batta on 26.11.2013 vide PSA No. 37349/2013.

8. Under these circumstances, the petitioner filed a petition under Order XXI Rule 106 of CPC to set aside the exparte order dated 30.01.2014 dismissing E.P.No.249 of 2006 and to restore the same along with a petition to condone the delay of 156 days in filing the petition to restore the said E.P. These events took place during the pendency of the aforesaid S.L.P before the Hon'ble Supreme Court.

9. In the counter, the respondent has stated that there is no scope for restoring E.P.No.249 of 2006. According to the respondent, if an execution proceeding is dismissed for default, only fresh proceeding has to be initiated. It has been further stated that decree was not executable and therefore there was no scope for allowing the prayer.

10. In the the impugned order, the Court has accepted the defence of the respondent and has dismissed the petition with the observation that the petition filed under the aforesaid provision was not suitable to the petitioner and that each and every day's delay has not been explained.

11. Aggrieved by the same the present Civil Revision Petition has been filed.

12. Meanwhile, the said S.L.P which was numbered as Civil Appeal No.10422 of 2011 and was dismissed by the Hon'ble Supreme Court on 24.10.2018.

13. The reason for non-service of notice according to the petitioners is on an account of the change in the name of the Street from Sengundar Street to Gandhi Street. Therefore every time the petitioners served the notice in the said E.P., the notice remained unserved to the bailiff.

14. I find that the order passed by the Court rejecting the E.A.No.3128 of 2014 not proper and requires interference. Though the petitioners were successful decree holders, they were unable to execute the decree for the last four decades and to compound the same court also dismissed the said E.A.No.3128 of 2014 unfairly by dismissing the

application filed for condonation of delay. Dismissal of E.P.No.249 of 2006 and dismissal of E.A.No.3128 of 2014 has resulted in a travesty of justice and the prolonged litigation by the respondent was intended to tire out the petitioners. In my view, the petitioners have made out sufficient cause for condoning the delay.

15. Accordingly, I am of the view that the impugned order passed in E.A.No.3128 of 2014 is liable to be set aside. The present Civil Revision Petition deserves to be allowed.

16. The IX Assistant City Civil Court, Chennai is directed to dispose E.P.No.249 of 2006 within a period of six months from the date of receipt of a copy of this order.

17. Consequently, the present Civil Revision Petition is allowed. No cost.

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Index :Yes/No

Internet :Yes/No

jen/kkd

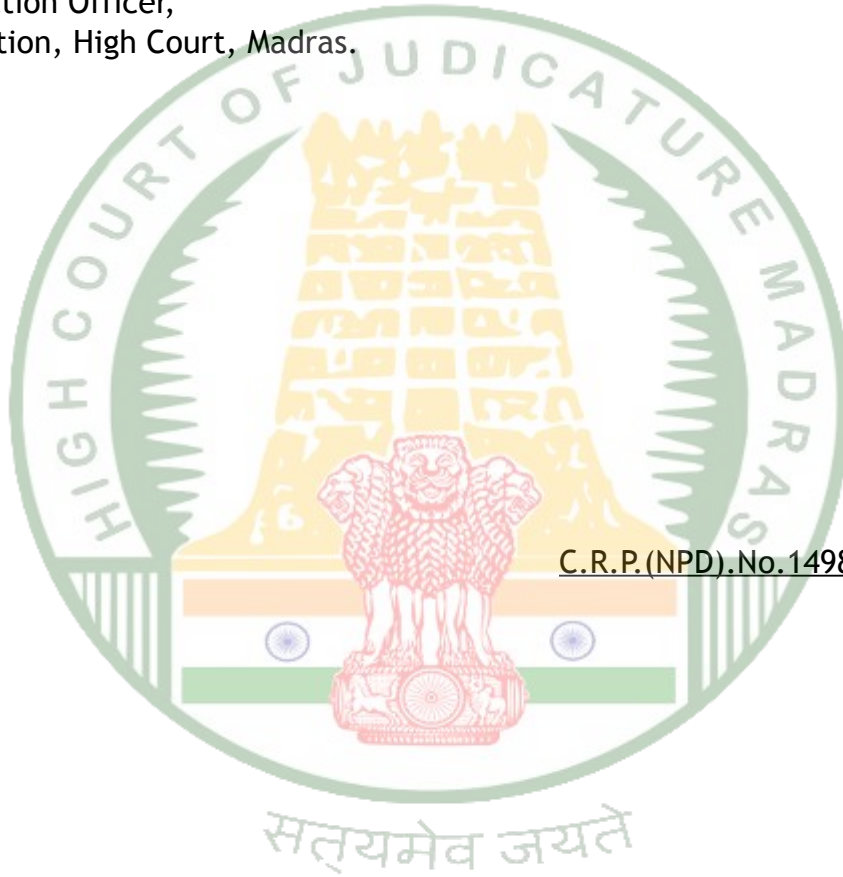
C.SARAVANAN, J.

jen

To

1.The IX Assistant City Civil Court,
Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras.



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