

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.04.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).Nos.1440 to 1444, 1446 to 1449 and 1451 of 2019
and C.M.P.Nos.9422, 9424, 9426, 9428, 9429, 9432, 9434, 9435, 9436 and 9438 of 2019

V. Mahindran

...Petitioner/Petitioner
/Defendant

Vs

Arcot Lutheran Church
rep. by its Secretary,
No.9, A.L. Campus,
Cuddalore – 607 001.

...Respondent/Respondent
/Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 22.01.2019 passed in I.A.No.2195 of 2018 in O.S.No.2445 of 2008 on the file of the learned XVIII Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.G. Veerapathiran
in all revisions

For Respondent : Mr. Srinath Sridevan
in all revisions

COMMON ORDER

The above Civil Revision Petitions are filed challenging the orders dated 22.01.2019 in I.A.Nos.2195, 2200, 2196, 2194, 2202, 2205, 2203, 2204, 2199 and 2201 of 2018 in O.S.Nos.2445, 2450, 2446, 2443, 2454, 2463, 2460, 2461, 2449 and 2452 of 2008 passed by the learned XVIII Assistant Judge, City Civil Court, Chennai.

2.All the applications have been filed to condone the delay of 3254 days in filing applications to set aside the *ex parte* order dated 09.01.2009.

3.The facts involved are more or less similar in all these applications and are as follows:

It appears that the plaintiff/Church has instituted suits filed

on 11.01.2008 for recovery of the premises in occupation of the revision petitioners. An *ex parte* decree was passed in all the suits on 09.01.2009. Thereafter, the plaintiff/Church has sought to execute the said decree by filing execution proceedings in the year 2012. The defendants contested the execution proceedings and ultimately, they have filed the applications to set aside the *ex parte* decrees only in the year 2018 with the delay of 3254 days.

4. In the affidavits filed in support of the petitions, the respective deponents have stated as follows:

The original rent was enhanced in the year 2004 and not being satisfied with the enhanced rent, on 31.10.2006, the plaintiff/Church had issued a notice terminating the tenancy and filed the suits. The defendants have also filed petitions for setting aside the *ex parte* decree. It is the case of the defendants that pursuant to the negotiations between the plaintiff and the defendants, the rent was increased and the

plaintiff/Church had agreed to withdraw the suits and a new tenancy was created. According to the revision petitioners/defendants, in the light of the above agreement enhancing the rent the plaintiff ought not to have filed a suit.

5.It is the further case of the defendants that in the light of the enhancement of rent, the defendants were lulled into believing that the plaintiff would not follow up the suit, however, contrary to the assurance the *ex parte* decree came to be passed on 09.01.2009 which has been communicated by their counsel. Further, on coming to know about the same, their counsel had filed an application to set aside the *ex parte* decree. Thereafter, when they had contacted the Church authorities they were informed that there is no necessity to fear about the decree and this is a routine matter. However, all of a sudden, in the year 2012, eviction petitions were filed to execute the *ex parte* decree. The defendants would submit that immediately, they have contacted their counsel who filed I.A.No.10136 of 2016 for

reconstructing the earlier application filed by them to set aside the *ex parte* decree. However, this application was ultimately withdrawn by the revision petitioners as the petition did not contain the word reconstitute on 11.01.2018 and the said application was dismissed as not pressed. Thereafter, the applications which are the subject matter of the revision came to be filed on 19.12.2017 which was numbered in the year 2018. The defendants would submit that the delay is neither wilful nor wanton but for the reasons narrated hereinabove.

6.The said application was objected to by the plaintiff by denying the allegations made in the affidavits filed in support of the petitions. The plaintiff would state that the defendants were aware of the decree as early as in the year 2009 and they have waited for nine years to file the applications to set aside the *ex parte* decree, more particularly, when they have been contesting the execution proceedings right from the year 2012 which would go to show that the statement of the defendants that they were

genuinely under the impression that the plaintiff would not proceed with the execution decree is a falsity. The Court below has dismissed the said application by stating that the revision petitioners had come to Court with unclean hands since they had withdrawn the applications which have been filed earlier for condoning the delay petition. The said order is the subject matter before this Court.

7.Mr.G. Veerapathiran, learned counsel for the revision petitioners would contend that the order of the Court below in coming to the conclusion that the defendants had come to the Court with unclean hands on the basis that they have suppressed the earlier applications filed for condoning the delay is totally erroneous. The learned counsel would represent that the earlier petition which had been withdrawn viz., I.A.No.10136 of 2016 was an application to condone the delay in reconstructing the petition filed for setting aside the *ex parte* decree which had been dismissed as not pressed and therefore, the basis on which the

impugned order came to be passed is absolutely misdirected. The learned counsel would further argue that they had been given assurance by the Church authorities and sought for proceeding further with the matter.

8.Per contra, Mr.Srinath Sridevan, learned counsel appearing for the respondent would contend that the very conduct of the defendants would clearly establish the delay by the defendants in prosecuting the suit. They have come to know about the *ex parte* decree in the year 2009 itself, but chosen to remain silent and I.A.No.10136 of 2016 was filed for reconstructing the applications which were allegedly filed to set aside the *ex parte* decree only in the year 2016. There is absolutely no explanation for the same, particularly, when the defendants had been contesting the execution proceedings right from the year 2012 onwards. He would therefore submit that this Court should not interfere with the considered order passed by the Court below.

9. Heard the learned counsel for the petitioners and the learned counsel for the respondent and perused the material available on record.

10. Given below is the chronology of the dates and events with reference to the suit on hand:

1. 11.01.2018 Suits filed for recovery of possession
2. 09.01.2009 Decrees passed in the respective suits.
3. 2012-2013 Execution Petitions filed to execute the *ex parte* decrees
4. 2016 Interlocutory Applications filed by the defendants to condone the delay in filing applications for reconstructing the petition filed for setting aside the *ex parte* decree.
5. 29.03.2017 Plaintiff filed an application to summon the respondents for cross examining them in the application filed by them to condone

the delay in filing the reconstruction petition.

6. 24.04.2017 Proof affidavits have been filed in the execution proceedings.
7. 19.12.2017 Petitions which are the subject matter of the suit are filed.
8. 11.01.2018 Petitions filed for condoning the delay in filing the application for reconstructing the petition to set aside the *ex parte* decree withdrawn.

11.A mere perusal of the above dates and events would clearly demonstrate that the decrees were passed in the year 2009 and it was brought to the knowledge of the defendants in the very same year and no steps were taken by them to set aside the *ex parte* decree, though the applications are filed. However, no details of dates on which these applications were filed nor their diary numbers / registration numbers were provided.

Thereafter, there is a silence till 2016, though execution proceedings have been filed in the year 2012-2013. The applications for reconstructing the earlier applications for setting aside the *ex parte* decree are kept pending till January 2018 and thereafter, the applications were dismissed as withdrawn. Meanwhile, the applications which are the subject matter of these revisions are filed. The defendants have come forward with a very feeble explanation in the petition filed for condoning the delay in filing the set aside application that the Church authorities had given assurance that they would not proceed further. Such a reason appears false since even as early as in the year 2012, the execution proceedings had been initiated. The revision petitioners who had come to know that the plaintiff has taken execution proceedings in the year 2012 itself does not take any serious efforts and only in the year 2018 the applications are filed to set aside the *ex parte* decree. I do not find any infirmity in the order passed by the learned XVIII Assistant Judge, City Civil Court, Chennai.

These Civil Revision Petitions are dismissed. No costs.
Consequently, connected Miscellaneous Petitions are closed.

15.04.2019

Index : Yes/No
Internet : Yes/No
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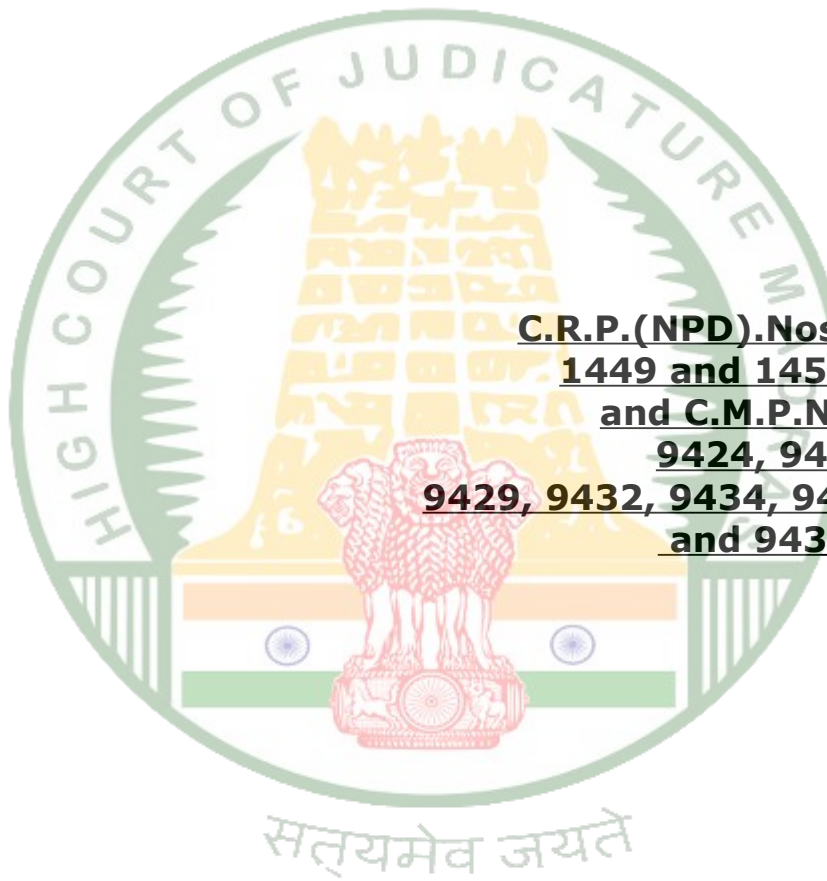
The XVIII Assistant Judge,
City Civil Court,
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P.T. ASHA, J,

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