

C.M.P.Nos.9123, 9126 of 2019 in C.M.A.Nos.SR16699, 16700 of 2019

T.RAJA, J.

These civil miscellaneous petitions have been filed to condone the delay of 69 days in preferring the appeals against the decretal orders dated 9.8.2018 passed in E.A.Nos.18 & 19 of 2018 in E.P.No.3 of 2018 in O.S.No.20 of 2014 by the learned II Additional District Judge, Erode.

2. The petitioner is the judgment debtor/second defendant in E.P.No.3 of 2018 in O.S.No.20 of 2014. When the respondent/decreed holder has filed the execution petition against the petitioner and others, the same was posted on 13.4.2018 for appearance of the petitioner. But, unfortunately, from 10.4.2018, the petitioner was severely affected by jaundice and taking country treatment and was bedridden. Only on 13.6.2018, he recovered from his illness and thereafter filed the petition to set aside the ex parte order with a prayer to give an opportunity to contest the above said E.P. As per Order XXI, Rule 106(3) of C.P.C., application to set aside the ex parte order shall be made within 30 days from the date of ex parte order. But taking note of the fact that the petitions were filed only on 13.6.2018, though the order was passed on 13.4.2018, on the ground of delay in filing the applications beyond the period of 30 days, it was pleaded that the applications were not maintainable.

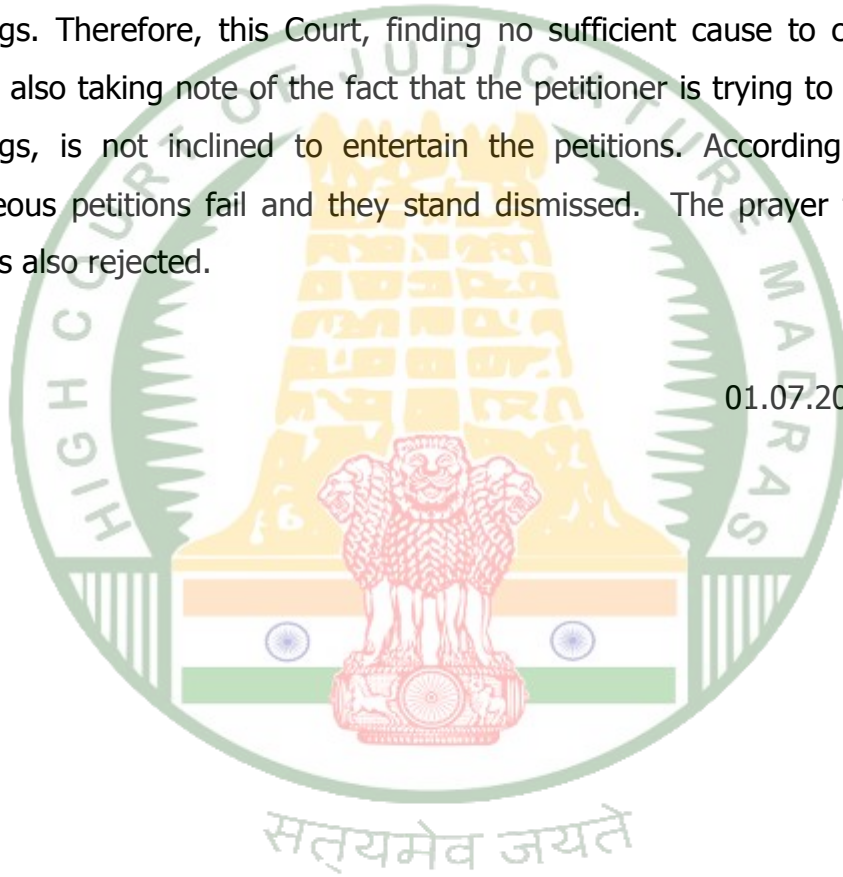
3. The Court below, finding that the petitioner has failed to assign any valid reason to set aside the ex parte order and there was already a delay in filing the applications to set aside the ex parte order dated 13.4.2018, dismissed the petitions. As against that, the present appeals have been filed with a delay of 69 days.

4. When the petitioner is the judgment debtor/second defendant, after the

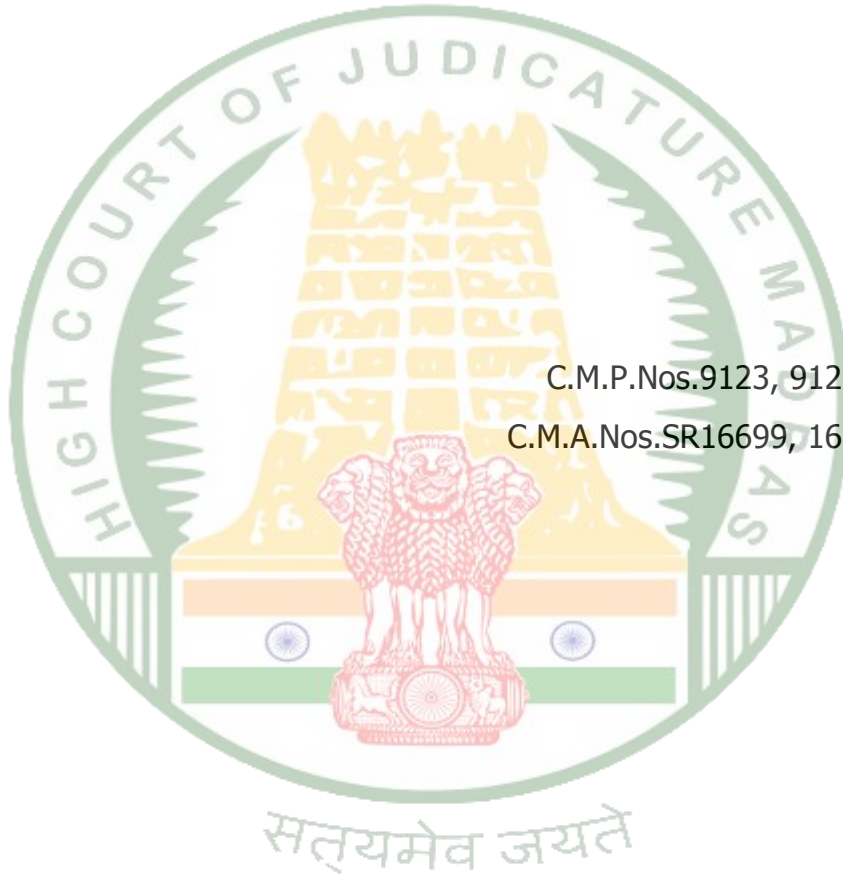
ex parte order was passed on 13.4.2018, to set aside the ex parte order, the petitioner has not filed the applications within 30 days and there was a delay. Therefore, the executing Court rejected the applications by order dated 9.8.2018. As against that order, this Court has been moved with a further delay. That shows that the petitioner was neither diligent nor careful in prosecuting the matters and it could be seen that the appeals have been filed only to drag on the proceedings. Therefore, this Court, finding no sufficient cause to condone the delay and also taking note of the fact that the petitioner is trying to drag on the proceedings, is not inclined to entertain the petitions. Accordingly, the civil miscellaneous petitions fail and they stand dismissed. The prayer to file fresh petitions is also rejected.

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