

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP(NPD).Nos.313 of 2018 and 4771 of 2017

and

C.M.P.No. 1683 of 2018

CRP(NPD).No.313 of 2018:

1.C.S.V.Raman
2.Sujatha Hariharan ..Petitioners / Defendants 1 & 3

Vs

1.Rishi Kapoor ..Respondent / Plaintiff
2.Anand S.Chabria ..Respondent/2nd Defendant

CRP(NPD).No.4771 of 2017:

1.Anand S.Chabria ..Petitioner / 2nd Defendant

Vs

1.Rishi Kapoor ..Respondent / Plaintiff
2.C.S.V.Raman
3.Sujatha Hariharan ..Respondents/Defendants 1&3

COMMON PRAYER: This Civil Revision Petitions filed under Section 115 of Code of Civil Procedure to set aside the fair and decretal order dated 28.08.2017 made in I.A.Nos. 8919, 8920 of 2015 in O.S.No.4411 of 2005 before the Hon'ble III Judge, City Civil Court at Chennai.

in CRP(NPD).No.313/2018

For Petitioners : Mr.A.V.Arun

For R1 : Mr.A.Ramesh Kumar

For R2 : M/s.Tranquebar Dorai Vasu

in CRP(NPD).No.4771/2017

For Petitioner : M/s.Tranquebar Dorai Vasu
For R1 : Mr.A.Ramesh Kumar
For R2 & R3 : Mr.A.V.Arun

COMMON ORDER

The above Civil Revision Petitions are filed challenging the order passed in I.A.Nos.8919, 8920 of 2015 in O.S.No. 4411 of 2005, in and by which, applications filed under Section 5 of the Limitation Act, seeking to condone the delay of 1433 and 1459 days respectively in filing application to set aside the ex-parte decree and to permit the petitioner to defend the suit has been dismissed.

2 The facts in nutshell are as follows:

The first respondent herein has filed a suit in O.S.No. 4411 of 2005 on the file of the learned III Assistant City Civil Judge, Chennai, for a declaration that the sale of the suit schedule property is null and void. The third defendant had filed a Written Statement and it is seen that the defendants 1 to 3 had entered appearance through late Mr.S.Venkateswaran, advocate. The said advocate had been diagnosed for diabetes and consulted senior Specialist Dr.C.V.Krishnaswami in TAG – VHS Diabetes Research Centre and thereafter he has cystic bronchiectasis and was referred to a

pulmonary specialist and he was diagnosed with "interstitial lung disease" and after which, he was totally restricted to the four walls of his house and he was not able to get in touch with his clients. He was therefore unable to even file the Written Statement on behalf of the defendants 1 to 3. The clients on their side were under the impression that Mr.S.Venkateshwaran, Advocate was taking care of the matter and therefore, had not paid much attention to the case though the Written Statement was filed by the third defendant. Thereafter, ex-parte decree was passed on 11.04.2011. The fact that, an ex-parte decree was passed, came to be known to the defendants 1 to 3 only in the month of March, 2015, thereafter they had engaged a lawyer and they had immediately taken out an application to set aside the ex-parte decree. Their erstwhile counsel Mr.S.Venkateshwaran, has filed supporting affidavit, narrating the facts despite which, the learned Judge has proceeded to dismiss the said applications filed by the second defendant in I.A.No. 8920 of 2015 and defendants 1 and 3 in I.A.No. 8919 of 2015, holding that the parties are protracting the proceedings. Therefore, the same cannot be condoned. The said application was vehemently contested by the plaintiff, who had contended that the petitioners has deliberately and wantonly remained ex-parte in the suit and that their intention was only to protract the litigation. The learned III Assistant Judge, City Civil Court, Chennai has dismissed the

applications holding the contention that they were not aware of the suit proceedings is unbelievable and the delay is inordinate and the same has not been properly explained. Challenging the same, the second defendant had filed CRP.No. 4771 of 2017 and defendants 1 and 3 have filed CRP.No.313 of 2018. Since, both the revision petitions relate to the same subject matter and the parties are one and the same, the common order is being passed.

3 Heard the learned counsel on either side.

4 From a perusal of the records, particularly the supporting affidavit filed by the erstwhile counsel, it is to be seen as to whether sufficient cause has been made out or not. The delay/lack of knowledge cannot be attributed directly to the defendants and it is only on account of the ill-health of the counsel, who has since passed away that the delay had been caused. However, it is to be borne in mind that the plaintiff has succeeded in the suit and had obtained a decree and the delay is inordinate and therefore they have to be compensated. Therefore, revision petitioners in each of the Civil Revision Petitions, shall pay a sum of Rs. 10,000/-, to the plaintiff through the counsel appearing for the revision petitioners within a period of two months from today. On such payment, the delay shall be condoned and the learned Judge is

directed to take the matter back on file. Considering the fact that the suit is of the year 2005, the learned Judge is directed to dispose of the suit with in a period of four months from the date of receipt of copy of this order.

In the result, these Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petition is also closed.

11.03.2019

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Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order

To

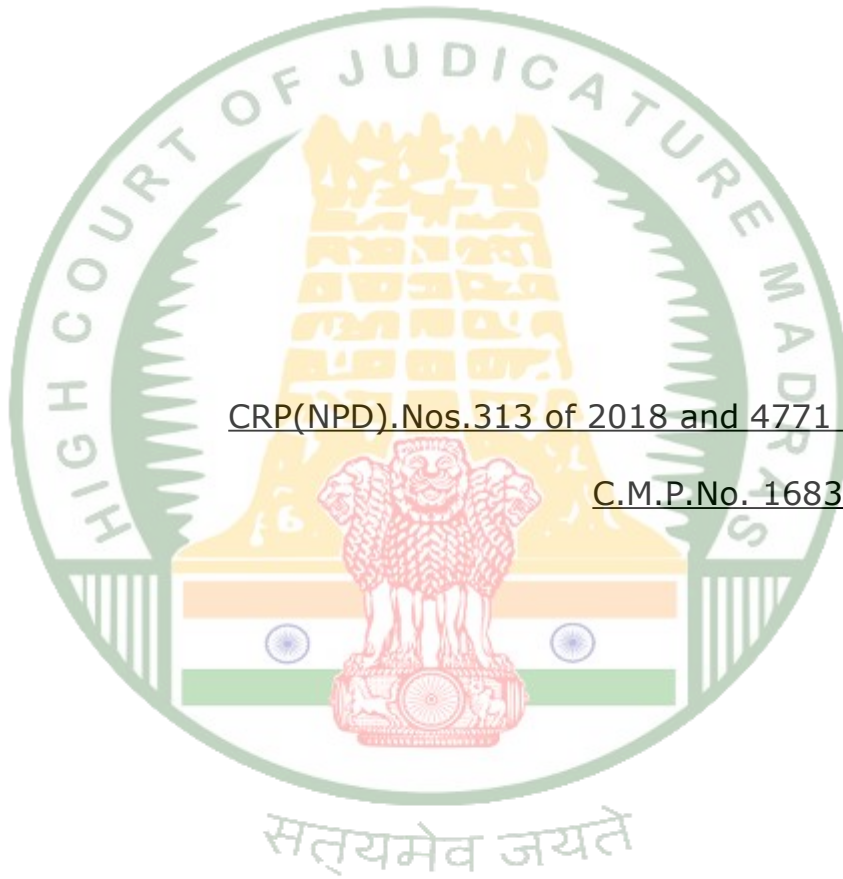
The Hon'ble III Judge,
City Civil Court,
Chennai.

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P.T.ASHA, J.

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