

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.02.2019

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.R.P.(PD).No.519 of 2018
and
C.M.P.No.2721 of 2018

Elred Kumar

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Petitioner

-vs-

1.Annai Builders and Real Estate Pvt.Ltd.
Represented by its Managing Director

2.S.Shanmugam

3.Arthi Print House
Represented by its Proprietor Mr.RameshBabu

4.The UCO Bank,
Represented by its Authorised Office
No.32-B, ThambuChetty Street,
Chennai-600 001.

सत्यमेव जयते

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 01.08.2017 passed by the learned Principal District Judge, Chengalpattu in I.A.No.146 of 2016 in I.A.No.711 of 2011 in O.S.No.33 of 2007.

For Petitioner : Mr. Adithye for M/S.Paul & Paul
For Respondents : Mr.Sirishchowdhary for
M/S M.T.M.Naidu for R1
: Not ready in notice for RR2 & 3
: No appearance for R4

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned Principal District Judge, Chengalpattu in I.A.No.146 of 2016 in I.A.No.711 of 2011 in O.S.No.33 of 2007 in and by which, the learned Judge has restored the I.A.No.711 of 2011 which has been dismissed for default on 25.03.2015.

2.Without delving into the details or the merits of the suit, it is suffice to state that the suit in O.S.No.33 of 2007 is filed by the 1st respondent herein, against the revision petitioner and others, for a declaration and recovery of possession and for injunction. The same was dismissed for default on 24.07.2009. Thereafter, a petition to condone the delay of 728 days in filing the petition to restore this suit was filed in I.A.No.711 of 2011. The 1st defendant/revision petitioner herein, has filed a detailed counter in the said Interlocutory Application.

3.From the records, it is further seen that the plaintiff had once again allowed the petition to be dismissed without taking steps to serve the respondents. The dismissal order was dated 25.03.2015. Thereafter, the plaintiff has filed two applications in I.A.Nos.145 and 146 of 2016, one to condone the delay of 173 days in filing the application to restore I.A.711/11 and the other to restore I.A.711/11 respectively, which was dismissed for default. It is further seen that the Court below allowed these applications. The order in I.A.No.145 of 2016 was taken up on revision to this Court in Civil Revision Petition No.518/2018 and by an order dated 19.02.2018, this Court was pleased to dismiss the revision filed by the revision petitioner herein, thereby confirming the order passed in I.A.No.145/2016. The order in I.A.No.146/2016 which is impugned in this Civil Revision Petition is only consequent to the order in I.A.No.145/16 since the reason given is one and the same.

4.The learned counsel for the petitioner would vehemently contend that he has not been heard before the order had been passed in I.A.No.146/16 and therefore the order suffers from an

infirmity. He has drawn my attention to the various endorsements in the docket sheets of IA.No.146 of 2016. It is no doubt true that the applicant has not been heard but the fact remains that this Court convinced with the reasons stated in I.A.No.145/16 had condoned the delay of 173 days and in the interest of justice, the petition was allowed and confirmed in revision. The order in I.A.No.146 of 2016 is a consequential order. The revision petitioner is at liberty to raise all the defenses that he was now raised in his counter to this revision in his arguments to the application in I.A.No.711/11, which is filed for condoning the delay of 728 days to restore the suit which was dismissed for default.

5.It appears that the respondent/plaintiff is in the habit of protracting the proceedings, which is evident from the fact that he has allowed nearly 728 days i.e., which is over two years, in filing the application to restore the suit, which was dismissed for default and not taken steps to serve the respondents. However considering the fact that the order in I.A.No.145/2016 is confirmed in CRP.518/2018 this Civil Revision Petition is therefore dismissed. Considering the fact that the suit is of the year 2007,

the learned District Judge is directed to dispose of the suit as expeditiously as possible, after giving opportunity to the 1st defendant to make all submissions in I.A.No.711/11. No costs. Connected Civil Miscellaneous Petition is closed.

21.02.2019

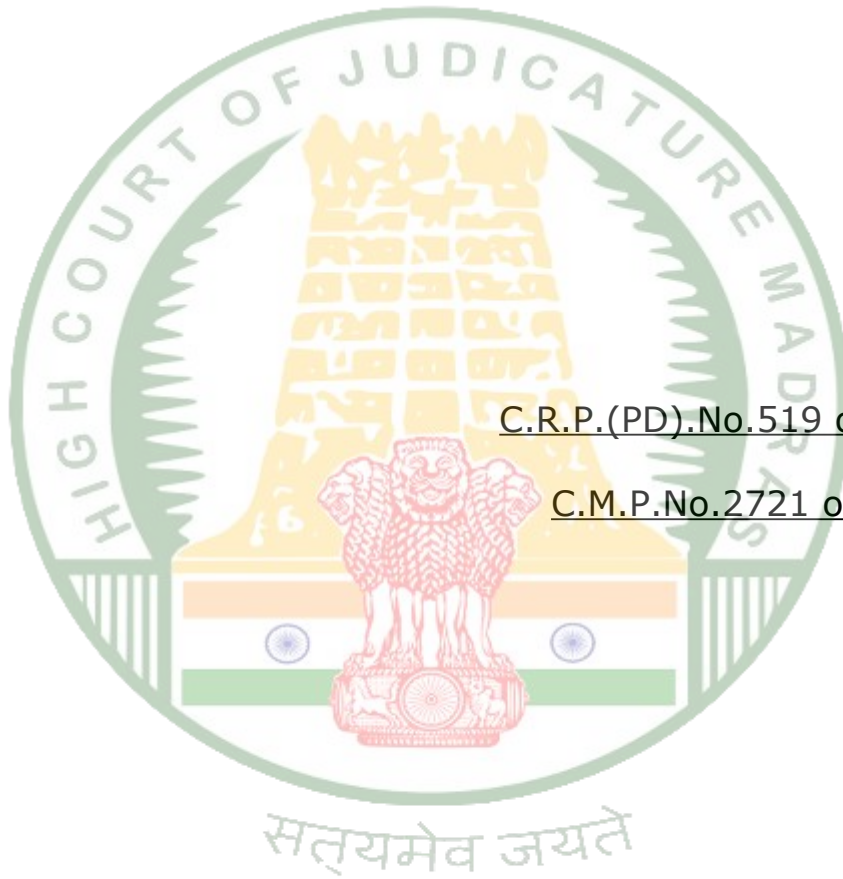
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Internet : Yes / No
Speaking/non-speaking order
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P.T.ASHA, J.
jrs

To
The Principal District Judge,
Chengalpattu



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