

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD)No.1543 of 2014

and

M.P. No.1 of 2014

Viswanathan

... Petitioner

Vs

1. Palanisamy

2. Ganesan

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside fair and decretal orders in CMA No.5 of 2006, dated 22.11.2013 on the file of Sub-Ordinate Judge, Ariyalur confirming the fair and decretal orders in I.A. No.558 of 2005 in O.S. No.174 of 2002, dated 23.01.2006 on the file of Additional District Munsif, Ariyalur.

For Petitioner : Mr.S. Kamadevan

For Respondents : Mr.C. Prabakaran for R1

No appearance for R2

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 22.11.2013 passed by the learned Subordinate Judge, Ariyalur in CMA No.5 of 2006 confirming the order dated 23.01.2006 passed by the learned

Additional District Munsif, Ariyalur in I.A. No.558 of 2005 in O.S. No.174 of 2002.

Brief facts leading to the filing of the instant Revision Petition are as follows :

2. The petitioner is the plaintiff in the suit O.S. No.174 of 2002 filed before the learned Additional District Munsif, Ariyalur. In the said suit, the petitioner has sought for a decree for mandatory injunction to direct the respondents / defendants to execute a sale deed for re-conveying the same to the plaintiff in respect of the suit schedule property. The respondents / defendants have also filed the written statement in the suit O.S. No.174 of 2002. The suit was listed for trial on 21.07.2005. On that date, the petitioner did not appear before the Court and hence, the Trial Court dismissed the suit for default on 21.7.2005. Thereafter, the petitioner filed I.A. No.558 of 2005 in O.S. No.174 of 2002 seeking to restore the suit, which was dismissed for default on 21.07.2005. The Trial Court, by its order dated 23.01.2006 in I.A. No.558 of 2005 in O.S. No.174 of 2002, dismissed the restoration application on the ground that even earlier on two occasions, the suit was dismissed for default and subsequently restored and therefore, no further indulgence can be granted to the petitioner for the third time. According to the Trial Court, no valid reason has been given by the petitioner for restoring the suit, which was dismissed for default on 21.07.2005.

Aggrieved by the dismissal of I.A. No.558 of 2005 in O.S. No.174 of 2002, the petitioner preferred an appeal before the learned Sub Court, Ariyalur in C.M.A. No.5 of 2006 and the said appeal was also dismissed on 22.11.2013 confirming the order of the Trial Court. Aggrieved by the dismissal of CMA No.05 of 2006, the instant Civil Revision Petition has been filed.

3. Heard Mr.S. Kamadevan, learned counsel for the petitioner and Mr.C.Prabakaran , learned counsel for the first respondent.

4. This Court has perused the impugned orders of the Courts below. The Trial Court has dismissed I.A. No.558 of 2005 solely on the ground that even earlier on two occasions, the suit was dismissed for default and was restored subsequently and therefore, no further indulgence can be granted to the petitioner.

5. This Court has also perused the copy of the plaint, which was filed in O.S.No.174 of 2002 on the file of the District Munsif Court, Ariyalur. It is a case of the petitioner, who is the plaintiff in the suit that the respondents / defendants have committed default in the payment of the balance sale consideration under the sale deed executed by the petitioner in favour of the respondents / defendants and therefore, he has filed the suit for re-conveyance of the suit schedule property in favour of the petitioner by the respondents / defendants.

6. This being the facts of the case, as pleaded in the suit in O.S. No.174 of 2002 filed by the petitioner, just because the suit was dismissed for default on two earlier occasions, in the interest of justice, the Trial Court as well as the First Appellate Court ought to have considered the reliefs sought for by the petitioner in the suit before dismissing the application filed by the petitioner to restore the suit, which was dismissed for default on 21.07.2005.

7. This Court has also perused the affidavit filed by the petitioner in support of I.A. No.558 of 2005 in O.S. No.174 of 2002. As seen from the affidavit, the petitioner has averred that he was unable to attend the Court on the date of hearing, due to illness, as he was suffering from high fever on that date. However, the Trial Court has dismissed I.A. No.558 of 2005 filed by the petitioner on the ground that no valid and bonafide reasons have been given by the petitioner for restoring the suit, which was dismissed for default on 21.07.2005. But as seen from the affidavit, reasons have been given by the petitioner that he was suffering from high fever on that date, when the case was listed for trial. As indicated earlier, the Trial Court ought to have seen the relief sought for in the plaint before dismissing the application filed by the petitioner for restoration of the suit as rejection of the representation applications may lead to denial of justice. But in the instant case, the Trial Court has not considered the same, but has dismissed the application, mainly on the ground that on earlier two occasions also the suit was dismissed for default and restored subsequently. A liberal approach will have to be followed in the instant case, as the reliefs

sought for in the plaint are crucial for the determination of the dispute between the parties. Admittedly in the instant case, the petitioner is in possession of the suit schedule property. This being the case, for effective adjudication of the dispute between the parties, the Trial Court ought to have allowed the restoration application viz., I..A No.558 of 2005 filed by the petitioner in O.S. No.174 of 2002 and put the petitioner to terms for his indifference in prosecuting the suit. Therefore, this Court is of the considered view that the impugned orders passed by the Courts below have to be set aside in view of the reasons assigned supra.

8. In the result, the impugned order dated 22.11.2013 passed in CMA No.05 of 2006 which confirmed the order dated 23.01.2006 passed in O.S. No.174 of 2002 are hereby set aside and the Civil Revision Petition is allowed on condition that the petitioners pays a sum of Rs.5000/- (Rupees five thousand only) to the learned counsel for the respondent on or before 11.07.2019, failing which the Civil Revision Petition stand automatically dismissed. Since the suit is of the year 2002, the Trial Court is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

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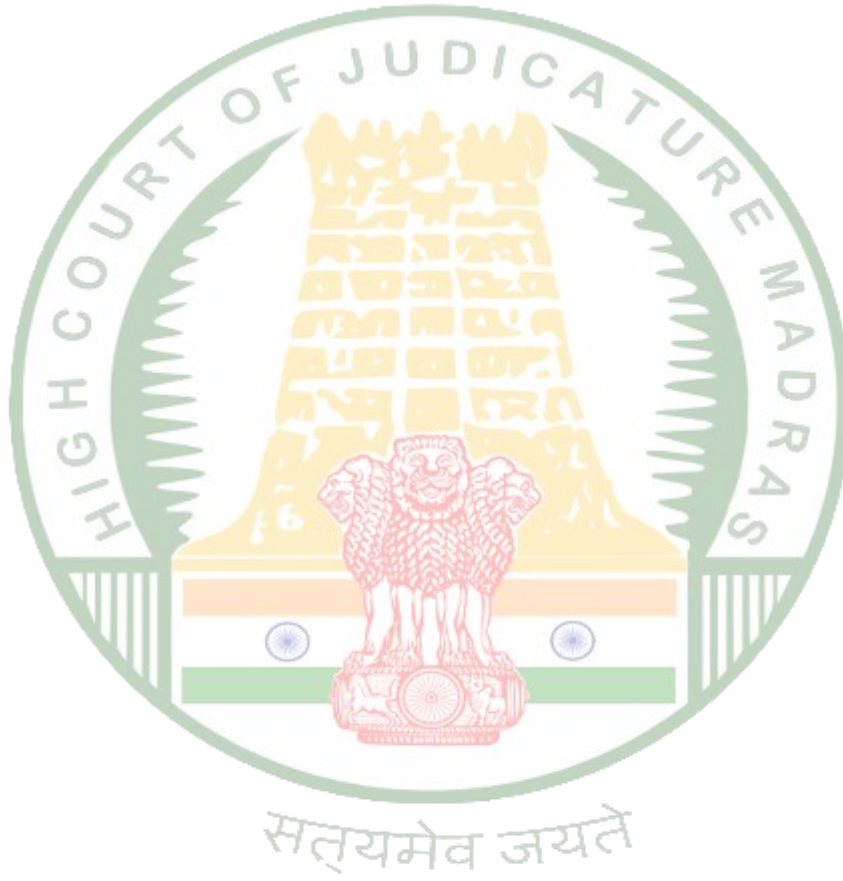
12.06.2019

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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To

1) The Sub-Ordinate Judge, Ariyalur

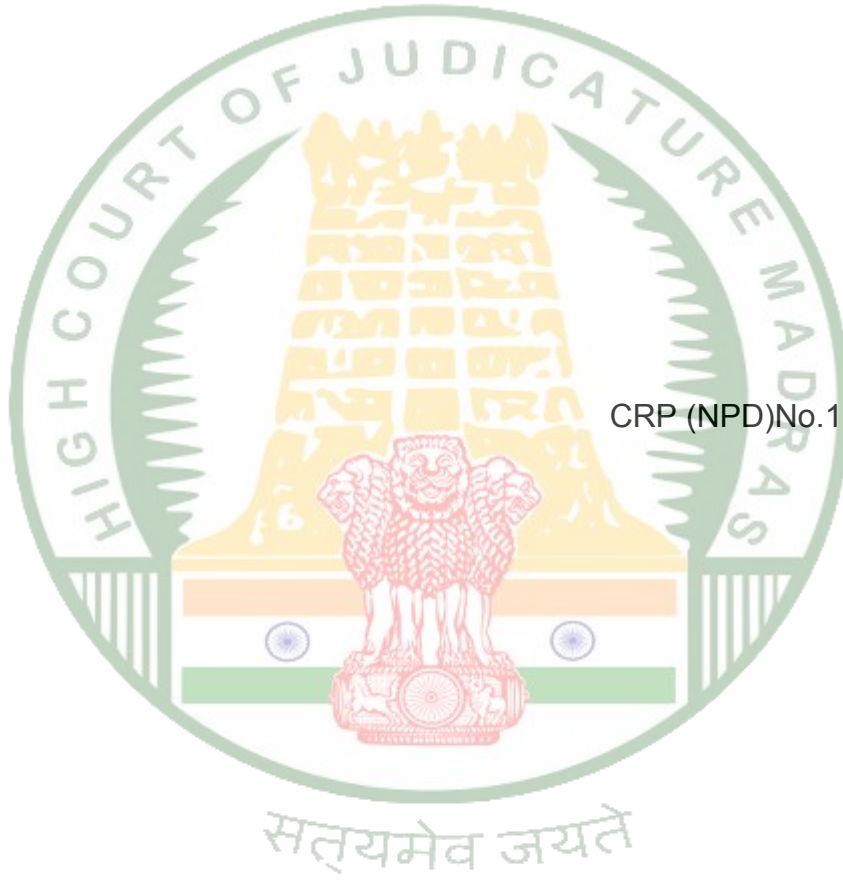
2) The Additional District Munsif, Ariyalur.



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ABDUL QUDDHOSE, J.

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