

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.NPD.No.1844 of 2014 and
M.P.No.1 of 2014

P.Somasundara Gounder

..Petitioner

Vs.

M.Govindasamy(died)

2.Lakshmi

3.Ramakrishnan

4.Manimegalai

(RR2 to R4 brought on record as LRs of the deceased sole respondent viz., M.Govindasamy vide Court order dated 19.07.2019 made in C.M.P.Nos.10698, 10703 and 10705 of 2019 in CRP.NPD.No.1844 of 2014)

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code to set aside the fair and decreetal orders dated 18.03.2014 passed in I.A.No.104 of 2014 in O.S.No.338 of 2006 on the file of the learned District Munsif, Kangayam.

For Petitioner : Mr.M.Saravanakumar

For Respondents

For R2 to R4: Mr.S.Saravanan
for Mr.P.Navaneetha Krishnan

R1 : Died

ORDER:

The defendant in O.S.No.338 of 2006 on the file of the learned District Munsif, Kangayam is the petitioner herein. Before the court below, the deceased first respondent Govindasamy as a plaintiff filed a suit as against the present petitioner and seeks the relief to direct the petitioner to repay the suit amount of Rs.96,140/- which is due towards loan availed by the petitioner.

2.During the course of trial proceedings, on 01.07.2009 when the suit is posted for appearance of petitioner, he has not appeared before the court below. Hence, the learned District Munsif, Kangayam passed an order of *exparte* against the petitioner and decreed the suit. Only after came into knowledge that the execution application in E.P.No.30 of 2013 has been filed by the petitioner, the petitioner came to know that an *exparte* decree was passed against him. In the said circumstances he approached the District Munsif Court, Kangayam and filed an application under

Section 5 of the Limitation Act, in which he prayed to condone the delay of 1562 days in filing the application to set aside the exparte decree.

3.The learned District Munsif, Kangayam after affording opportunity to the first respondent herein, by order dated 18.03.2014 dismissed the application filed by the petitioner by observing that the previous antecedents of the petitioner clearly prove the fact that he wanted to protract the proceedings. Aggrieved over the said finding, the petitioner is before this Court with the present Civil Revision Petition.

4.Today when the petition is came up for hearing, both the counsels appearing for the petitioner and the respondents are present.

5.The learned counsel appearing for the petitioner would contend that since the petitioner was bedridden for the period of four months when at the time exparte decree was passed, he unable to attend the court. In otherwise, he is not having any intention to protract the proceedings before the trial court.

6.On the other hand, the learned counsel appearing for the respondents would contend that in the order dated 18.03.2014, the learned District Munsif, Kangayam has categorically mentioned the previous antecedents of the petitioner and there only by considering that the petition filed by the petitioner is not having any merits and ultimately he dismissed the application.

7.The submissions made by the counsels appearing on either side are considered.

8.On go through the impugned order passed, it appears immediately after filing of the suit, the petitioner herein appeared before the court below through an advocate and filed his written statement. Thereafter, for the non-appearance of the petitioner, on 28.08.2007 an exparte decree was passed. Subsequently the first respondent filed execution petition in E.P.No.6 of 2008. On receipt of notice from the execution proceedings, the petitioner filed a petition to set aside the exparte decree in I.A.No.230 of 2008 and the same was allowed on cost. Immediately after set asiding the exparte decree, suit was again posted on 01.10.2008 for trial. On

16.12.2008 plaintiff was examined as PW1, and thereafter when the case was posted for cross examination of PW1, despite several adjournments the petitioner had not appeared before the trial court and thereby on 01.07.2009 again ex parte decree was passed as a second time. So the said circumstances shows that the petitioner is not interested in proceeding with the trial before the trial court. The second reason submitted by the petitioner is he was bedridden on the date on which exparte decree was passed, only because of the illness he has not appeared and proceeded with the trial.

9.Now on go through the affidavit filed by the petitioner before the trial court in support of the petition, he has stated that he has suffered illness due to jaundice. According to him, he was taking treatment in Perundurai Sanitorium.

10.In this regard, the learned counsel appearing for the first respondent would contend that if really the petitioner was taking treatment in Sanitorium, it is easy for him to produce the certificates for proving that the petition is filed with sufficient cause.

11. On considering the said submission, it is true all are aware that Perundurai Sanitorium is an institution run by the Government. So if the petitioner was taking treatment in that hospital necessarily medical records are created in the name of the petitioner and the same was available with him. But before the court below to show his bonafide, the petitioner has not produced any document. Even assuming that the petitioner was taking treatment in the hospital for the period of four months, it is easy for him to contact the counsel and file a petition immediately after completing treatment. But the petitioner filed the petition to condone the delay of 1562 days, which is enormous and not explained on the side of the petitioner. The court below by observing as non production of medical records is also been one of the reasons for dismissing the petition, I am also of the considered view that the reasons stated by the learned District Munsif, Kangayam is within the principles of law. Hence, without any hesitation I am of the opinion that the order passed by the court below is not having any material irregularity.

12.Hence, for the reasons stated above, the Civil Revision Petition filed by the petitioner is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

03.10.2019

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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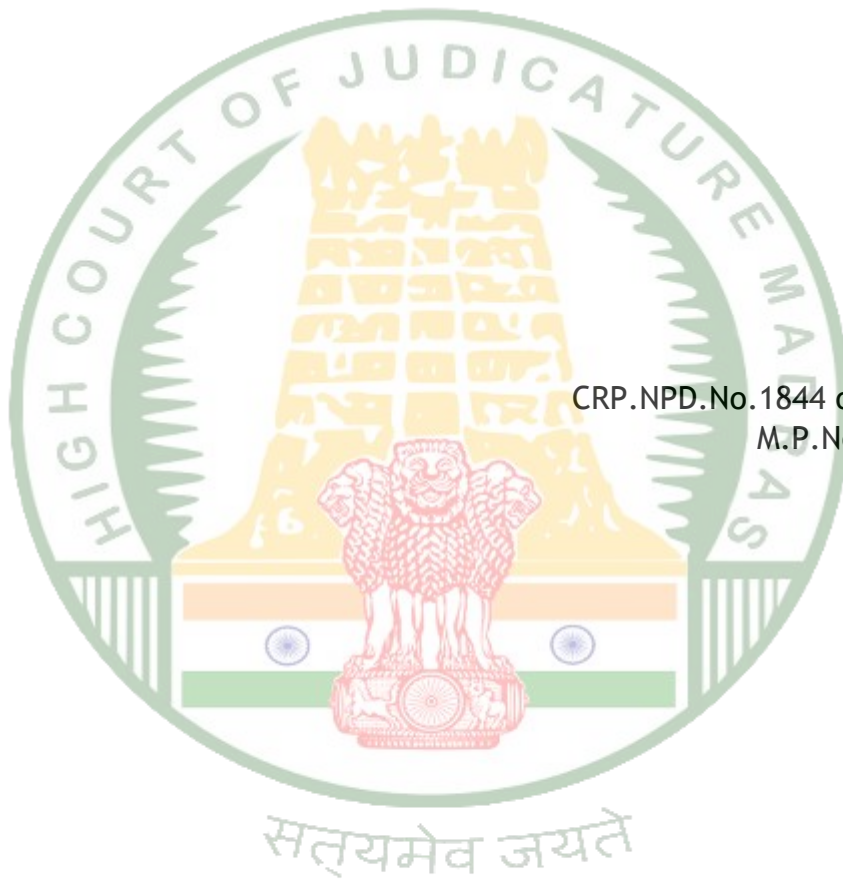
To
The learned District Munsif,
Kangayam.



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R.PONGIAPPAN,J.

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