

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P (NPD).No.1967 of 2014

and

M.P.No.1 of 2014

K.E.Akbar Ali

... Petitioner

vs

1.G.C.Jain

2.K.A.Sethi

3.K.A.Abdul Gani

(R2 and R3 Notice not necessary-  
given up)

.. Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, aggrieved by the Order and Decreetal Order dated 21.04.2014 made in I.A.No.752 of 2012 in O.S.No.517 of 2008 on the file of District Munsif-Cum-Magistrate Court at Sriperumbudur.

For Petitioner : Mr.M.Sriram

For R1 : Mr.K.M.Balaji

**ORDER**

The present civil revision petition is directed against the fair and decreetal order dated 21.04.2014 in I.A.No.752 of 2012 in O.S.No.517 of 2008 passed by the District Munsif-Cum-Judicial Magistrate Court, Sriperumbudur.

2. The 1<sup>st</sup> respondent had originally filed O.S.No.873 of 1996 before the District Munsif Court, Kancheepuram for declaratory relief in respect of the suit schedule properties.

3. By the impugned order, the Court of District Munsif-Cum-Judicial Magistrate at Sriperumbudur has dismissed the application filed by the petitioner to condone the delay of 129 days in filing the application to set aside the exparte decree.

4. The petitioner was the defendant in O.S.No.873 of 1996 before the Court of District Munsif, Kancheepuram. The petitioner filed the written statement before the District Munsif Court, Kancheepuram. In the year 2002, pursuant to the formation of the District Munsif cum-Judicial Magistrate Court at Sriperumbudur, the case was transferred to Court of District Munsif-cum-Judicial Magistrate, at Sriperumbudur and renumbered as O.S.No.517 of 2008 from District Munsif Court, Kancheepuram.

5. It appears that the petitioner had not bothered to verify the status after transfer and was perhaps awaiting a travel notice from the said Court and the respondents/plaintiffs. It appears, a counsel also appeared before the District Munsif-cum-Judicial Magistrate Court at Sriperumbudur and undertook to file Vakalat on behalf of the petitioner.

6. However, no vakalat was filed on behalf of the petitioner. The petitioner was therefore called absent and set exparte on 07.02.2011. Subsequently, an exparte decree was passed on 02.11.2011 .

7. The petitioner therefore filed I.A.No.752 of 2012 before the Court of District Munsif, Sriperumbudur to condone the delay of 129 days in filing application to set aside the exparte decree dated 02.11.2011.

8. The District Munsif-cum-Judicial Magistrate Court, Sriperumbudur has dismissed the application on the ground that the petitioner has not explained the delay properly and therefore the application was liable to be dismissed.

9. Heard the learned counsel for the petitioner and the respondents. I have also perused the records.

10. The learned counsel for the respondents/plaintiffs submits that the proper remedy for the petitioner was to file an appeal as per the amended Civil Procedure Code. Hence, the petition under Order IX Rule 13 of C.P.C. alone was not maintainable and that there was no bonafides in the petition.

11. The affidavit filed in support of the application to condone the delay in filing the application under Order IX Rule 13 of CPC is bareft of

details. However, the respondents/plaintiffs cannot enjoy the fruits of the exparte decree, by taking advantage exparte order pursuant to the transfer of the suit from Court of District Munsif, Kanchipuram to Court of District Munsif-cum-Judicial Magistrate, Sriperumbudur particularly when the petitioner had filed his written statement.

12. Consequently, I am of the view that ends of justice will be met if the petitioner is given an opportunity to put forth his case subject to payment of cost to compensate the 1<sup>st</sup> respondent/plaintiff.

13. I find that the petitioner has also made of sufficient grounds for allowing the application filed under Order IX Rule 9 of CPC. Therefore, even though the said application has not been numbered in view of the dismissal of the application filed for condonation of the delay, I am of the view that there is no point in directing the court to pass a separate order Order IX Rule 9 of CPC. Accordingly, the said application is also allowed.

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14. The petitioner shall therefore deposit a sum of Rs.10,000/- as cost to the credit of the above suit within a period of four weeks from the date of receipt of a copy of this Order. On such deposit, the respondents/plaintiffs shall be entitled for payment out and are at liberty to withdraw the same.

15. It is noticed that the suit is of year 1996 and no decision has been passed on merits in view of the petitioner being set ex parte on 7.2.2011 and in view of the subsequent ex parte decree dated 2.11.2011.

16. As the present Civil Revision Petition is being allowed, I am of the view to meet the ends of justice, the District Munsif Cum Magistrate, Sriperamputhur shall take of the case for trial and dispose the suit on merits in accordance with law within a period of nine months from date of receipt of a copy of this Order.

17. The present Civil Revision Petition stands allowed with the above observations. Consequently, connected Miscellaneous Petition is also closed.

25.04.2019

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

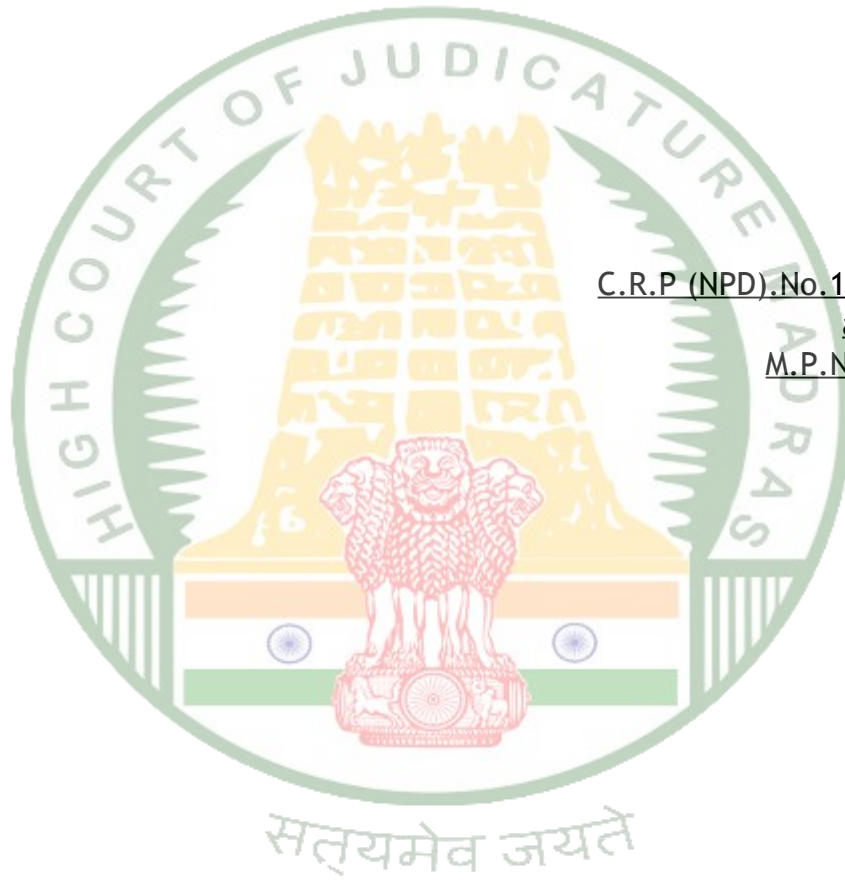
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To

1. District Munsif-Cum- Judicial Magistrate Court,  
Sriperumbudur.

2. The Section Officer,  
V.R. Section, High Court, Madras.

C.SARAVANAN,J.  
arb



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