

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(PD).No.2049 of 2014
and
M.P.No.1 of 2014

Perumal

... Petitioner

Vs.

Pattusamy Gounder (Deceased)

1.Dhanalakshmi Ammal

2.Murugan (Minor)

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of Constitution of India, to set aside the fair order and decreetal order dated 10.03.2014 passed by the learned Principal Subordinate Judge, Thindivanam in I.A.No.373 of 2013 in O.S.No.262 of 2001 and dismiss I.A.No.373 of 2013 in O.S.No.262 of 2001.

For Petitioner : Mr.B.Harikrishnan

For Respondents : No appearance

ORDER

The present Civil Revision Petition is directed against the fair and

decretal order dated 10.03.2014 in I.A.No.373 of 2013 in O.S.No.262 of 2001 passed by the Principal Subordinate Judge, Tindivanam. The Court below has allowed the application filed to condone the delay of 876 days in filing application to set aside exparte decree.

2.Though notice was ordered on the respondents and their names were printed in the cause list, there is no representation for the respondents. Hence the case is taken up for hearing.

3. The petitioner is the plaintiff in O.S.No.262 of 2001. The suit was filed for recovery of money based on the promissory note dated 13.05.2000 alleged to have been executed by the 1st defendant Pattusamy Gounder who died during the pendency of the suit.

4. The 2nd and 3rd respondents were impleaded as his legal representatives vide order in I.A.No.548 of 2003 dated 28.04.2004. The suit was thereafter decreed exparte on 06.01.2006 since they failed to file their written statement.

5.The 2nd and 3rd respondents thereafter had filed an application under Order 9 Rule 13 and Section 151 of CPC, to set aside the exparte decree passed on 06.01.2006. The said application was returned for complying certain defects on 20.09.2010.

6. Thereafter, the 2nd and 3rd respondents had filed I.A.No.373 of 2013, to condone the delay of 876 days in filing the above application to set aside the exparte decree on 06.01.2006.

7. The Court below allowed the application subject to payment of cost of Rs.3000/- to the petitioner within 25.03.2014.

8. Aggrieved by the said order condoning the delay, the petitioner has filed the present Civil Revision Petition to set aside the impugned order dated 10.03.2014 in I.A.No.373 of 2013 in O.S.No.262 of 2001.

9. The learned counsel for the petitioner submits that the impugned order was passed without any reasoning as the delay has not been properly explained. It was therefore submitted that mere the reasoning that the respondent may have a fair case to succeed on merits was not sufficient and therefore prayed for setting aside the order.

10. I have considered, the submissions of the petitioner and the documents on record. In exparte judgment and decree, there is no discussion. Therefore, the respondents are entitled to participate in the proceedings and defend themselves. It is not the length of the

delay but sufficient cause that is relevant for condoning the delay. The Court has concluded that the respondents have a fair chance to succeed and therefore allowed the petition and ordered the respondents to pay the cost by 25.03.2014 and to report compliance thereof on 26.03.2014, failing which the order would stand automatically vacated.

11.The petitioner has however rushed the filing the present Civil Revision Petition. This Court has also not granted stay while ordering the notice on the respondents.

12.The present status of the suit is not known as to whether the respondents have complied with the order by paying the cost and had reported compliance thereafter.

13.I am of the view, the respondents/defendants deserve fair chance to defend themselves. Whether the petitioner/plaintiff has established the execution of the promissory note and whether by impleading the respondents as legal representatives are bound by such promissory note has to be decided only by way of trial and not by way of non speaking ex parte decree especially when the contesting party have come forward to defend themselves though belatedly.

14.I therefore find no merits in the present Civil Revision Petition except to avoid trial. I am not inclined to interfere with the impugned order passed by the lower court.

15.In case the cost ordered has not been paid in view of the pendency of the present Civil Revision Petition, the respondents shall deposit the cost as ordered in the impugned order within a period of 15 days from the date of receipt of a copy of this order before the Subordinate Court, Tindivanam or any other Court to which the case may be transferred on account of change of jurisdiction. Such amount shall be deposited into the credit of the above suit within such time. On such deposit the petitioner shall be entitled for payment out.

16.In case there is compliance, the lower Court is directed to complete the trial and pass a final judgment and decree within period of six months from the date of receipt of a copy of this order as the suit is of the year 2001.

17.The present Civil Revision Petition thus stands dismissed with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

29.03.2019

Index:Yes/No

Internet :Yes/No

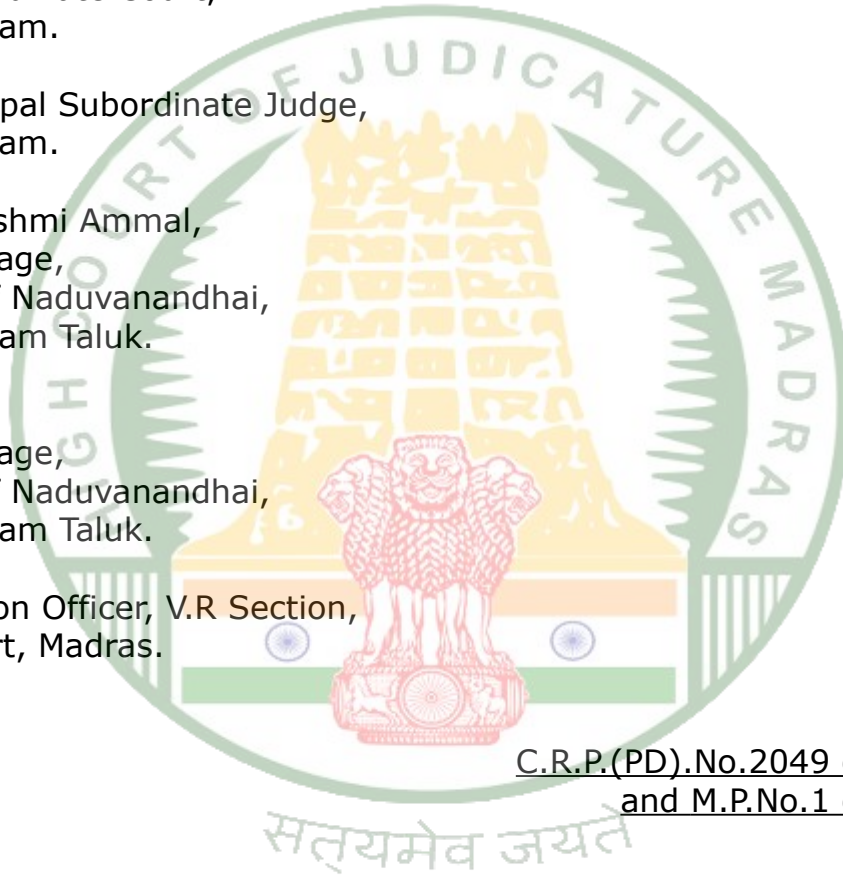
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C.SARAVANAN, J.

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To

- 1.The Subordinate Court,
Thindivanam.
- 2.The Principal Subordinate Judge,
Thindivanam.
- 3.Dhanalakshmi Ammal,
Pudur Village,
Hamlet of Naduvanandhai,
Thindivanam Taluk.
- 4.Murugan,
Pudur Village,
Hamlet of Naduvanandhai,
Thindivanam Taluk.
- 5.The Section Officer, V.R Section,
High Court, Madras.



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