

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2019

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THE HON'BLE MR. JUSTICE R.PONGIAPPAN

CRP. NPD. No. 2494 of 2014

and

MP. No. 1 of 2014

The Kodavasal Co-operative Land
Development Bank Ltd.
Rep. by its President,
Vetriazhagan,
S/o Sundaramurthy,
Kodavasal, Thiruvarur District

...Petitioner

Vs.

1.Tamil Nadu Mercantile Bank Ltd.,
Thiruvarur – Rep. By its Branch Manager
T.Mathivanan S/o S.Thangaraj,
Thiruvarur D.Mu. and Taluk

2.Balan Agencies – Rep. by its Sole Proprietor -
D.Sivasankaran S/o Dhanapalan,
13A, Kumbakonam Main Road (Balan Water Service),
Nannilam Dt Mu., Kodavasal and Taluk

3.G.Dhanapalan

..Respondents

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PRAYER:

The Civil Revision Petition is filed under Article 227 of the
Constitution of India against the order dated 05.04.2014 passed in

I.A.No.17 of 2012 in A.S.No. of 2012 on the file of the learned Principal District Judge, Thiruvavarur.

For Petitioner : Mr.K.A.Ravindran

For R1 : Mr.N.K.S.Rukmangathan

For R2 & R3 : Mr.C.Nithyash Sekhar

ORDER

The petitioner herein is the third defendant in O.S.No.39 of 2008 on the file of the District Court, Tiruvavarur. Before the trial court the first respondent in this Civil Revision Petition has filed a suit as against the petitioner herein and the second and third respondents and seeks the relief to grant a preliminary mortgage decree directing the second defendant to pay the suit amount with costs and subsequent interest. By judgment and decree dated 15.11.2010, the learned Subordinate Judge, Tiruvavarur allowed the suit and granted the preliminary mortgage decree in favour of the first respondent. Subsequent to that on 20.04.2012 in I.A.No.240 of 2011, final decree has also been passed in favour of the first respondent.

2. Aggrieved over the said finding, the petitioner, who is the third defendant preferred an appeal with the delay of 439 days. The

learned Principal District Judge, Tiruvarur numbered the application filed by the petitioner as I.A.No.17 of 2012 and after affording an opportunity to the other respondents dismissed the petition filed by the petitioner by observing that the first respondent in this Civil Revision Petition has asked for relief against the petitioner herein and thereby the petition filed by the petitioner to condone the delay of 439 days is not having any merits. Further he observed the reason for delay has not been properly explained by the petitioner. Ultimately the petition filed by the petitioner to condone the delay of 439 days was dismissed. Aggrieved over the said finding, the petitioner is before this Court with the present Civil Revision Petition.

3.Today when the petition is came up for hearing the learned counsel appearing for the petitioner, learned counsel appearing for the first respondent and the learned counsel appearing for the second and third respondents are all present.

4.The learned counsel appearing for the petitioner would contend that previously the petitioner has also given the loan to the second and third respondents. But in the judgment rendered by the learned Principal District Judge, Tiruvarur there is no order as to the loan

availed by the second and third respondents from the petitioner and therefore, the appeal is maintainable. Further he would submit that apart from the loan availed from the first respondent, the second and third respondents herein availed loan from the petitioner also. Hence, the petitioner is also entitled to recover the loan availed by the second and third respondents for which no order has been passed by the learned Principal District Judge, Tiruvarur, which is erroneous in law.

5. On the other hand, the learned counsel appearing for the first respondent would contend that as per the order passed by this Court, the loan availed by the second and third respondents are fully paid to him and as of now no due is with him.

6. The learned counsel appearing for the second and third respondents has also made a submission that the loan availed by the first respondent was entirely paid by the second and third respondents and since the petitioner is arrayed as defendant, he is not at all entitled to claim the loan availed from him by way of suit preferred by the first respondent.

7.Submissions made by the learned counsel appearing on either side are considered.

8.It is not in dispute before the trial court only the first respondent herein filed the suit for recovering the loan availed by the second and third respondents. In otherwise in the said suit, there is no relief prayed against the petitioner. Only in the said circumstances, the suit was decreed and thereafter, the loan availed by the second and third respondents are entirely paid by them. So it is natural since the petitioner herein has not filed any independent suit against the borrowers and proceeded in accordance with law, he is not having any *locus standi* to challenge the findings arrived in the earlier suit. Without having any decree against the second and third respondents he wanted to challenge the findings arrived at by the trial court. Hence, the appeal suit filed by the appellant / petitioner alone is not maintainable. In otherwise, in respect of the reasons stated by the first appellate court for dismissing the petition is also taken into account that he has not produced the relevant document for providing the sufficient cause in filing the petition not within the stipulated period. Hence, the Civil Revision Petition filed by the petitioner is not having any merits.

R.PONGIAPPAN,J.

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9.Accordingly, the Civil Revision Petition is disposed of. It is open to the petitioner to initiate separate proceedings for recovering the loan availed by the second and third respondents appropriately. Consequently, connected miscellaneous petition is closed. No costs.

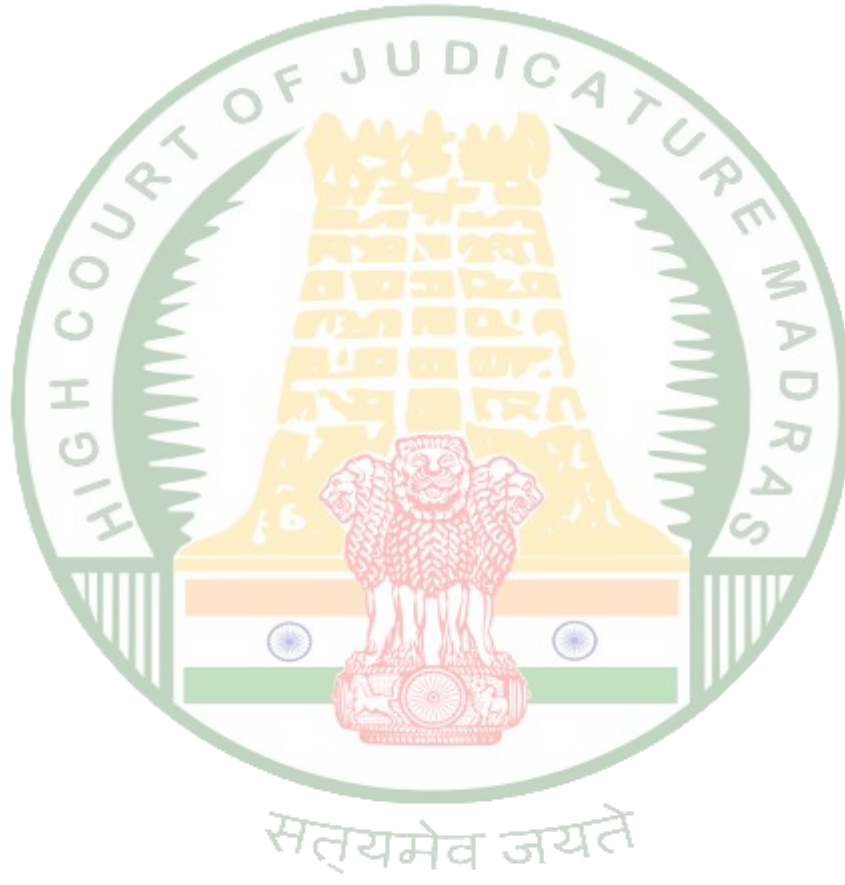
01.10.2019

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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To
The learned Principal District Judge,
Thiruvavur

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