

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2019

CORAM

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

CRP.NPD. No. 2876 of 2014
and MP. No. 1 of 2014

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

Vs.

1.Tamil Nadu Mercantile Bank Ltd. -
Rep. By its Branch Manager, Power Agent -
T.Mathivanan S/o S.Thangaraj,
51/10, Karaikattu Street,
Thiruvarur D.Mu. and Taluk -
Thiruvarur Taluk and District

2.G.Dhanapalan

3.N.Padmavathi

4.D.Muralidharan

5.D.Sivasankaran

..Respondents

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PRAYER: The Civil Revision Petition is filed under Article 227 of the
Constitution of India against the order and decree dated 05.04.2014
passed in I.A. No. 18 of 2012 in A.S. No. of 2012 on the file of the
learned Principal District Judge, Thiruvarur.

For Petitioner : Mr.K.A.Ravindran

For R2 to R5 : Mr.C.Nithysh Sekhar

ORDER:

The petitioner herein is the fifth defendant in O.S.No.40 of 2008 on the file of the learned District Judge, Tiruvarur. Before the trial court the first respondent in this Civil Revision Petition filed a suit as against the petitioner herein and respondents 2 to 5, seeks the relief to grant preliminary mortgage decree directing the defendants 1 to 4 to pay the suit amount with costs and subsequent interest. By judgment and decree dated 15.11.2010, the learned Subordinate Judge, Tiruvarur 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.242 of 2011, final decree has also been passed in favour of the first respondent.

2. Aggrieved over the said findings, the petitioner, who is the fifth 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.18 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 that 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 and the learned counsel appearing for the second to fifth respondents are alone present.

4.The learned counsel appearing for the petitioner would contend that previously the petitioner given the loan to the second to fifth 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 to fifth respondents and therefore, the appeal is maintainable. Further due to the official correspondence, apart from the loan availed from the first respondent, the second to fifth respondents herein availed loan from the petitioner also. Hence, the petitioner is also

entitled to recover the loan availed by the second to fifth respondents for which no order has been passed by the learned Principal District Judge, Tiruvarur, which is erroneous in law.

5.The learned counsel appearing for the second to fifth respondents made a submission that the loan availed by the first respondent was entirely paid by the second to fifth 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.

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

7.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 to fifth 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 to fifth 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, the petitioner is not having any *locus standi* to challenge the findings arrived in the earlier suit. Though he is not having any decree against the second to fifth respondents he wanted to challenge the findings arrived by the trial court. Hence, the appeal suit filed by the appellant / petitioner 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.

8. 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 to fifth respondents appropriately if necessary. Consequently, connected miscellaneous petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

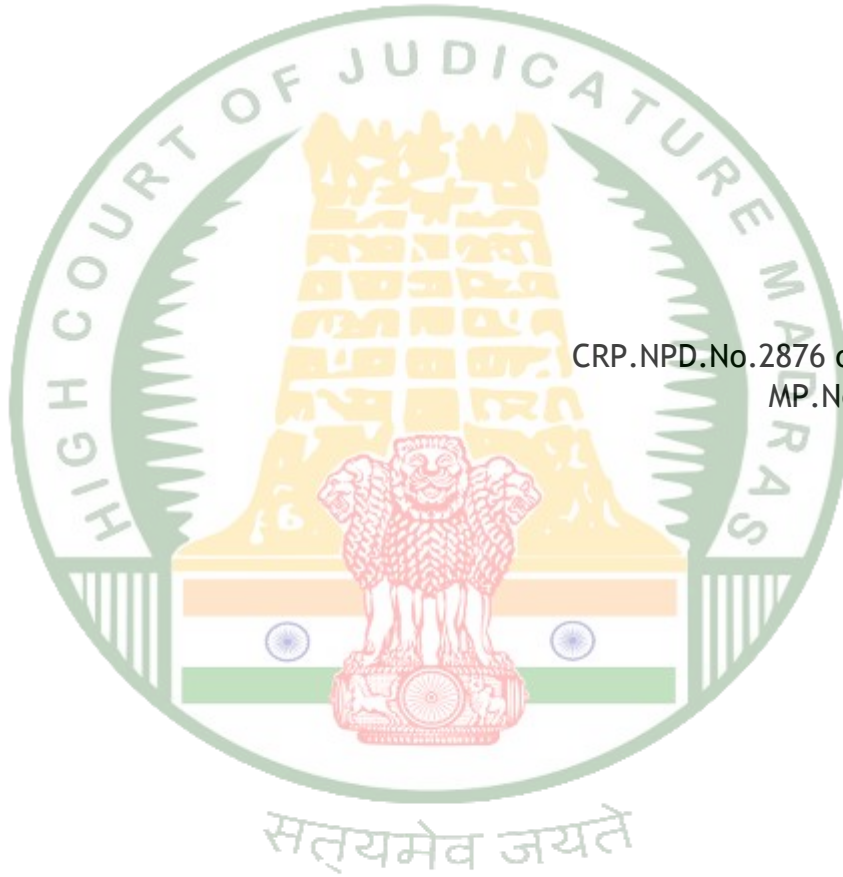
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R.PONGIAPPAN,J.

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To
The learned Principal District Judge,
Thiruvavarur



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MP.No.1 of 2014

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