

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD)No.2915 of 2014

and

M.P. No.1 of 2014

Agoram

...

Petitioner

Vs

Velayutham

...

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A. No.731 of 2012 in O.S. No.28 of 2010, dated 30.04.2014 on the file of the Court of District Munsif, Sirkali and allow the said I.A.

For petitioner : Mr.A. Muthukumar

For respondent : Mr.S. Sounther

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 30.04.2014 passed by the District Munsif Court, Sirkali in I.A. No.731 of 2012 in O.S. No.28 of 2010.

Brief facts leading to the filing of the instant Civil Revision Petition :-

2. The petitioner is the defendant in the suit O.S. No.28 of 2010 instituted by the respondent seeking for recovery of possession of the suit schedule property. An ex-parte decree, dated 29.02.2012 came to be passed in favour of the respondent against the petitioner. Thereafter, the petitioner filed I.A. No.731 of 2012 in O.S. No.28 of 2010 seeking to condone the delay of 131 days in filing an application to set aside the ex-parte decree.

3. According to the petitioner as seen from the affidavit filed in support of I.A. No.731 of 2012, he came to know about the passing of the ex-parte decree only on 02.08.2012, when notice in the execution petition filed by the respondent was served on him. A counter was also filed by the respondent denying the averments contained in the affidavit filed in support of I.A. No.731 of 2012 and the respondent has stated that no sufficient reasons have been given for the condonation of the delay and further has stated that even earlier, the petitioner was set ex-parte and an ex-parte decree came to be passed against him, which was subsequently set aside only at the instance of the petitioner.

4. The Trial Court by its order, dated 30.04.2014 in I.A. No.731 of 2012 in O.S No.28 of 2010 dismissed the said application on the ground that no sufficient reasons have been given by the petitioner for condonation of the delay

and it has also observed that it is for the second time, the petitioner is filing the application to set aside the ex-parte, as even earlier an ex-parte decree came to be passed which was also set aside only at the instance of the petitioner. Aggrieved by the dismissal of I.A No.731 of 2012 in O.S. No.28 of 2010, the instant Civil Revision Petition has been filed under Article 227 of the Constitution of India.

5. Heard Mr.A.Muthukumar, learned counsel for the petitioner and Mr.S.Sounther, learned counsel for the respondent.

6. This Court has perused and examined the impugned order. As rightly observed by the Trial Court, the petitioner has not given sufficient reasons for condoning the delay in filing an application to set aside the ex-parte decree and he has not been vigilant in defending the suit.

7. Admittedly, the petitioner was earlier set ex-parte and an ex-parte decree came to be passed against him. At his instance, the ex-parte decree was set aside. Once again, he was set ex-parte and an ex-parte decree was passed against him on 29.02.2012. In his affidavit filed in support of I.A. No.731 of 2012 in O.S. No.28 of 2010, the only reason given by the petitioner for not contesting the suit on merits is that he was not aware of the suit proceedings and he came to know about the passing of the ex-parte decree only on receipt of the

notice in the execution petition filed by the respondent against him i.e. on 02.08.2012.

8. As seen from the records, the petitioner had received the suit summons and has contested the suit earlier and due to his non appearance, he was set ex-parte and the ex-parte decree also came to be passed earlier. Only at his instance, the ex-parte decree which was passed earlier was set aside by the Trial Court. Once again the petitioner has been set ex-parte and once again ex-parte decree came to be passed against him. Therefore, the statement made by the petitioner that he came to know about the ex-parte decree, only on receipt of the notice in the execution petition filed by the respondent cannot be believed.

9. The Trial Court has considered all these aspects and only thereafter has dismissed the application filed by the petitioner on the ground that sufficient reasons have not been given by him for condoning the delay. Further, it is now submitted by the learned counsel for the respondent that the petitioner has already handed over the possession of the suit schedule property to the respondent, for which, the learned counsel for the petitioner is unable to get confirmation from his client.

10. For the foregoing reasons, this Court is of the considered view that there is no merit in this revision. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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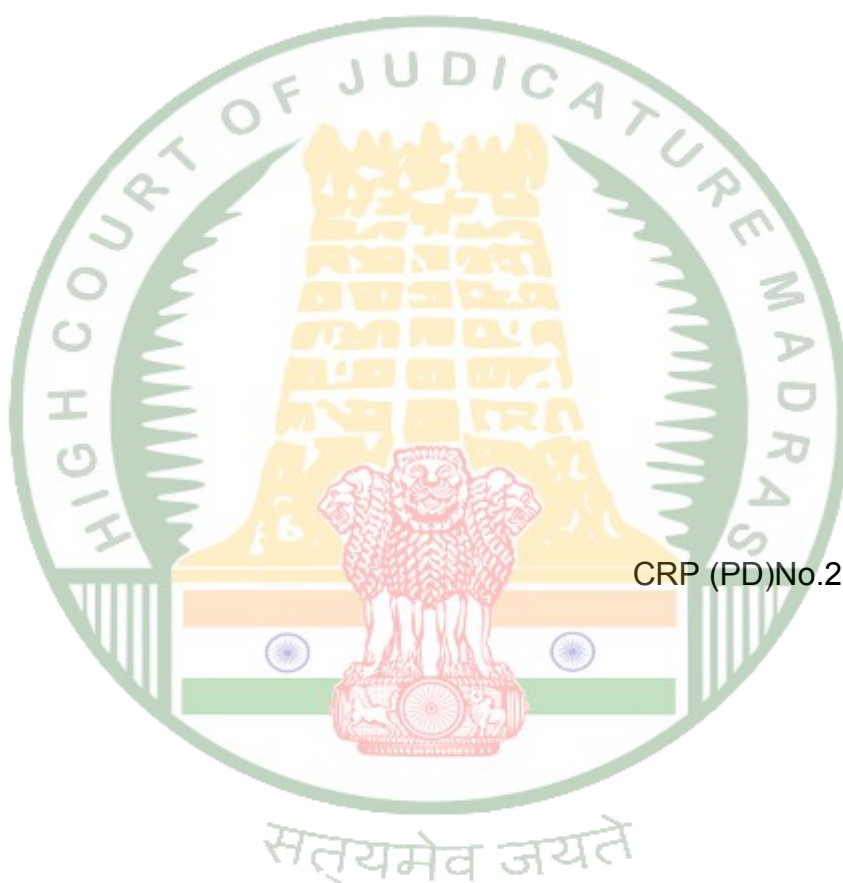
To
The District Munsif, Sirkali.



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ABDUL QUDDHOSE, J.

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