

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2019

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD) No.3502 of 2014

&

M.P.No.1 of 2014

Jagadeesan

... Petitioner

Vs

Selvaraj

... Respondent

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair and decreetal order of the learned Principal District Munsif, Tindivanam in I.A.No.949 of 2013 in O.S.No.415 of 2009 dated 25.06.2014.

For Petitioner : Mr.S.Kaithamalaikumaran

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 25.06.2014 passed by the learned Principal District Munsif, Tindivanam in I.A.No.949 of 2013 in O.S.No.415 of 2009.

Brief facts leading to the filing of the instant revision:

2. The petitioner is the plaintiff in the suit O.S.No.415 of 2009 pending on the file of the learned Principal District Munsif Court, Tindivanam. The petitioner filed the said suit for recovery of money against the respondent based on promissory notes. An ex parte decree dated 30.08.2010 came to be passed against the respondent. The respondent filed I.A.No.949 of 2013 in O.S.No.415 of 2009 to condone the delay of 1084 days in filing an application to set aside the ex parte decree dated 30.08.2010.

3. The only reason stated in the affidavit filed in support of I.A.No.949 of 2013 is that the respondent did not know about the passing of the ex parte decree dated 30.08.2010 and that, he came to know about the same only after the receipt of notice in the execution petition filed by the petitioner to execute the said ex parte decree dated 30.08.2010.

4. A counter affidavit was also filed by the petitioner in I.A.No.949 of 2013 stating that no sufficient reasons have been given by

the respondent for condoning the inordinate delay. By order dated 25.06.2014, the learned Principal District Munsif, Tindivanam allowed I.A.No.949 of 2013 in O.S.No.415 of 2009 and condoned the inordinate delay of 1084 days in filing an application to set aside the ex parte decree. Aggrieved by the order dated 25.06.2014 passed in I.A.No.949 of 2013 in O.S.No.415 of 2009, the instant civil revision petition has been filed.

5. Heard Mr.S.Kaithamalaikumaran, learned counsel for the petitioner. Despite service of notice on the respondent and the name of the respondent having been printed in the cause list today, no one has entered appearance on behalf of the respondent.

Discussion:

6. As seen from the affidavit filed in support of I.A.No.949 of 2013, excepting for stating that he was not aware of the passing of the ex parte decree dated 30.08.2010 and that he became aware of the same only after receiving of the notice in the execution petition, no sufficient reasons have been given by the respondent to condone the inordinate

delay of 1084 days in filing an application to set aside the ex parte decree. However, the Trial Court by impugned order dated 25.06.2014 without considering the fact that the delay sought to be condoned is an inordinate delay, has allowed I.A.No.949 of 2013, on condition that the respondent pays a sum of Rs.2,000/- to the petitioner on or before 04.07.2014.

7. The Trial Court has not considered the nature of the suit filed by the petitioner under the impugned order. Admittedly, the suit filed by the petitioner is based on a promissory note and the ex parte decree dated 30.08.2010 passed in favour of the petitioner is for a sum of Rs.20,000/- together with interest and costs. These facts ought to have been considered by the Trial Court, but the same has not been done so. The Trial Court ought to have examined all these aspects before passing final orders in I.A.No.949 of 2013. Therefore, this Court is of the considered view that the order passed by the Trial Court is an erroneous order and will have to be set aside.

Conclusion:

8. In the result, the impunged order dated 25.06.2014 passed in I.A.No.949 of 2013 in O.S.No.415 of 2009 by the learned Principal District Munsif, Tindivanam is hereby set aside. Accordingly, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

28.06.2019

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Index: Yes/ No

Internet: Yes/No

Speaking Order/Non-speaking Order

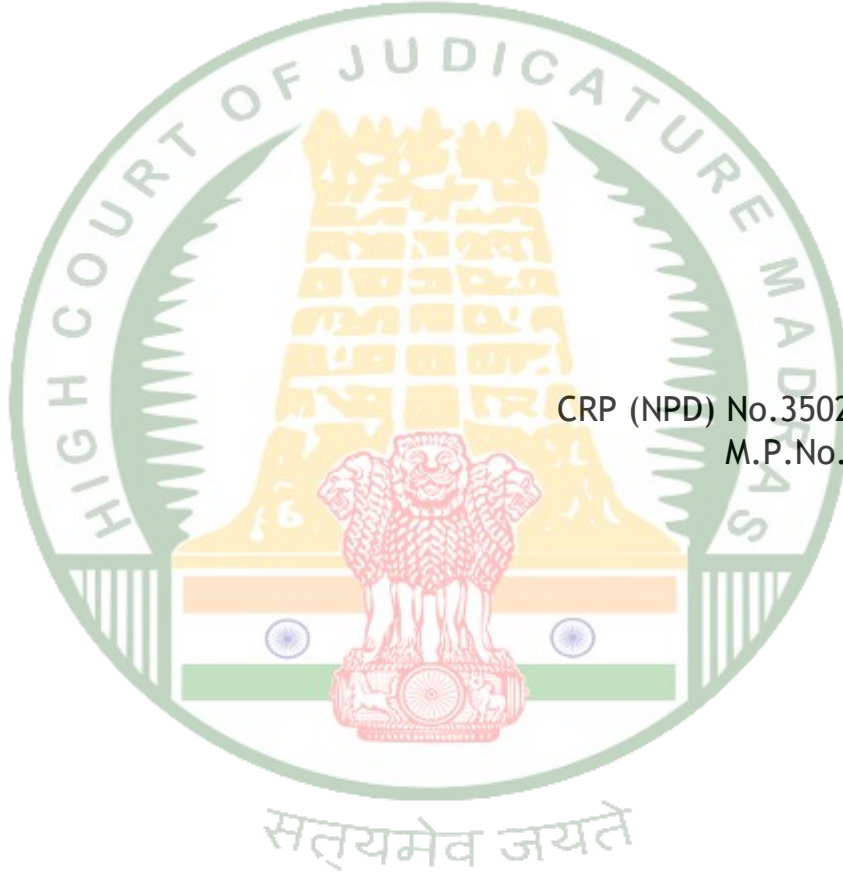
To

The Subordinate Judge, Neyveli

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ABDUL QUDDHOSE, J.

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