

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD) No.3577 of 2014 &
M.P.No.1 of 2014

Ellammal ... Petitioner

Vs.

S.Chelladurai ... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure to set aside the fair and final order dated 25.08.2014 passed in I.A.No.314 of 2014 in O.S.No.172 of 2012 on the file of the Sub Court, Attur, Salem District.

For Petitioner ... Mr.R.Asilesh
for M/s.I.C.Vasudevan

For Respondent ... Mr.P.Jagadeesan

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ORDER

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The instant revision has been filed as against the order dated 25.08.2014 passed by the Sub Court, Attur, Salem District in I.A.No.314 of 2014 in O.S.No.172 of 2012.

Brief facts leading to the filing of the instant revision:

2. The petitioner is the defendant and the respondent is the plaintiff in the suit O.S.No.172 of 2012. The respondent filed a suit for recovery of a sum of Rs. 4,76,000/- together with interest and costs. The suit was filed, based on promissory notes and as seen from the plaint, prior to the institution of the suit, a legal notice was also issued to the petitioner calling upon him to pay the borrowed money. The petitioner entered appearance in the suit O.S.No.172 of 2012 through a counsel, but failed to file a written statement and hence, he was set *ex parte* and subsequently, an *ex parte* decree dated 05.10.2013 came to be passed against the petitioner in favour of the respondent. Thereafter, the petitioner filed I.A.No.314 of 2014 in O.S.No.172 of 2012 seeking to condone the delay of 210 days in filing an application to set aside the *ex parte* decree dated 05.10.2013. As seen from the affidavit filed in support of I.A.No.314 of 2014, the reason given by the petitioner for not filing the application on time to set aside the *ex parte* decree is that he fell ill and was suffering from Jaundice and was unable to move out of his house to contact his counsel.

3. A counter affidavit was also filed by the petitioner/respondent in I.A.No.314 of 2014, denying the averments contained in the affidavit filed in support of I.A.No.314 of 2014 and further stating that the respondent/plaintiff had already filed an execution petition to execute the ex parte decree dated 05.10.2013 in R.E.P.No.29 of 2014. The Trial Court by its order dated 25.08.2014 dismissed I.A.No.314 of 2014 filed by the petitioner on the ground that no supporting documents were filed by the petitioner to prove that he was suffering from Jaundice and not keeping in good health. Aggrieved by the dismissal of I.A.No.314 of 2014, the instant Civil Revision Petition has been filed.

4. Heard Mr.R.Asilesh, learned counsel appearing for the petitioner and Mr.P.Jagadeesan, learned counsel appearing for the respondent.

Discussion:

5. Admittedly, the suit filed by the respondent against the petitioner is a money suit, based on promissory notes executed by the petitioner in favour of the respondent. Admittedly, the petitioner

received the suit summons and had also engaged a counsel to defend the suit filed by the respondent. Despite engaging a counsel, he failed to file the written statement in the suit. Since the written statement was not filed, he was set *ex parte* and an *ex parte* decree dated 05.10.2013 came to be passed against him in favour of the respondent. There was a delay of 210 days in filing an application to set aside the *ex parte* decree dated 05.10.2013. The reason given in the affidavit filed in support of I.A.No.314 of 2014 is that the petitioner was not keeping good health and was suffering from Jaundice and therefore, he was unable to contact his counsel. Admittedly, as rightly held by the Trial Court, no supporting documents were submitted by the petitioner to prove his illness.

6. Even in the written statement filed along with the condone delay application, except for stating that the petitioner's husband was working as operator in the respondent's bore well company by name "India Borewell Company" at Attur T.K., Salem District and at the time of appointment of the petitioner's husband in the respondent's company, the respondent had got signatures from the petitioner and her husband in blank promissory notes and other papers, there was no other defence raised in the written statement. Further, no dates have been mentioned

nor any documentary evidence produced by the petitioner along with the written statement to substantiate his defence. If the petitioner was genuinely interested in defending the suit and as a prudent litigant, he would have filed a medical certificate to prove his illness, whereas in the instant case, no such document was produced before the Trial Court.

7. The Trial Court after considering all the materials and pleadings available on record has come to the right conclusion that no sufficient reasons have been given by the petitioner to condone the delay of 210 days in filing the application to set aside the ex parte decree dated 05.10.2013.

Conclusion:

8. In the result, there is no infirmity in the order passed by the Trial Court. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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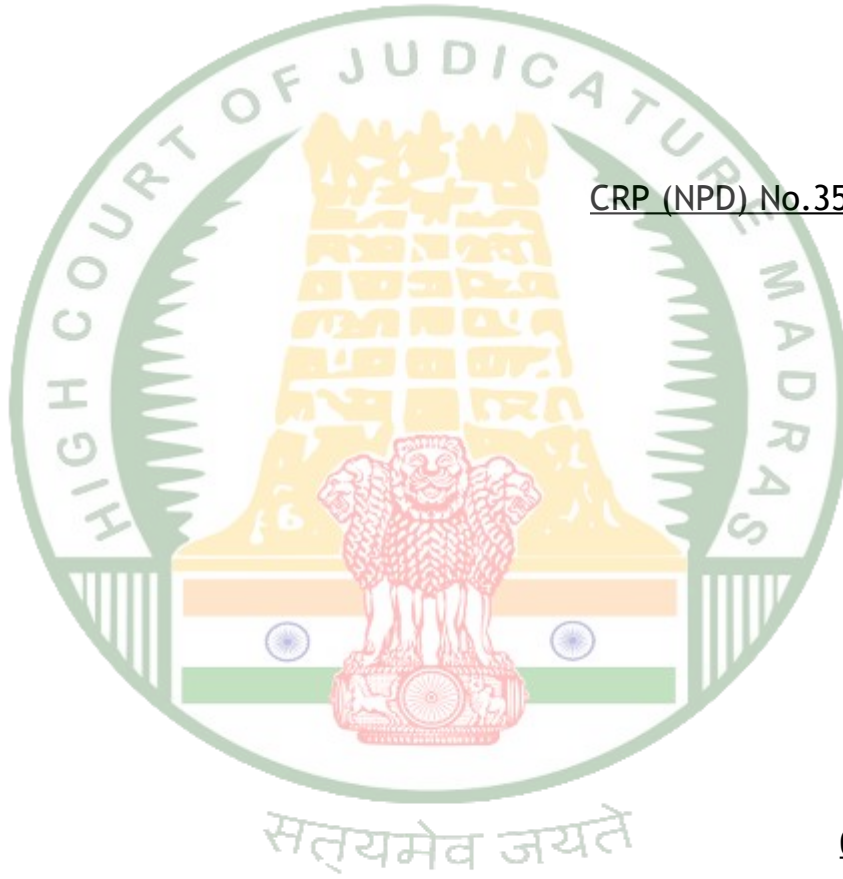
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ABDUL QUDDHOSE. J,

To

The Sub Court, Attur, Salem District



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