

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD) No.4084 of 2014

&

M.P.No.1 of 2014

Muthusamy

... Petitioner

Vs

Pappathi

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreetal order dated 17.12.2013 made in I.A.No.89 of 2012 in C.F.R.No.11197 of 2011 on the file of the Subordinate Judge, Sankari.

For Petitioner : Mr.R.Tholgappian

For Respondent : Mr.N.Manokaran

WEB COPY

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 17.12.2013 passed in I.A.No.89 of 2012 in C.F.R.No.11197 of 2011 by the learned Subordinate Judge, Sankari.

Brief facts leading to the filing of the instant revision:

2. The petitioner is the defendant in the suit O.S.No.173 of 2008 which has been filed by the respondent seeking for recovery of a sum of Rs.77,645/- together with interest and cost. The said suit was filed based on the promissory note executed by the petitioner in favour of the respondent. The suit O.S.No.173 of 2008 was decreed on 05.04.2011. Aggrieved by the said Judgment and Decree, the petitioner preferred an appeal. However, there was a delay in the representation of the appeal papers. The petitioner filed I.A.No.89 of 2012 to condone the delay of 410 days in representing the appeal papers before the Appellate Court viz., the Subordinate Judge, Sankari. The reason given in the affidavit filed in support of I.A.No.89 of 2012 for the delay in representation is that the petitioner fell ill and he was bed ridden and he was taken to kerala for herbal treatment and hence, he was unable to

instruct his counsel and therefore, the bundle concerned got mixed up with other bundles in the office of the petitioner's counsel.

3. A counter affidavit was also filed by the respondent in I.A.No.89 of 2012 in C.F.R.No.11197 of 2011 denying the averments contained in the affidavit filed in support of I.A.No.89 of 2012 and stating that no sufficient reasons have been given by the petitioner for the inordinate delay. The Court below by its order dated 17.12.2013 dismissed I.A.No.89 of 2012 filed by the petitioner on the ground that no sufficient reasons have been given to condone the inordinate delay of 410 days in representing the appeal papers and no documentary evidence has been produced by the petitioner to prove that he was ill and bed ridden and taken for treatment to Kerala. Aggrieved by the dismissal of I.A.No.89 of 2012 in C.F.R.No.11197 of 2011, the instant civil revision petitioner has been filed under Article 227 of the Constitution of India.

4. Heard Mr.R.Tholgappian, learned counsel for the petitioner and Mr.N.Manokaran, learned counsel for the respondent.

Discussion:

5. Admittedly no documentary evidence has been produced before the court below to prove that the petitioner was ill and bed ridden and was taking treatment at Kerala. Further, the suit filed by the respondent against the petitioner is a money suit, based on promissory notes and the Judgment and decree was passed in favour of the respondent as early as on 05.04.2011 in O.S.No.173 of 2008.

6. The Appellate Court has dismissed the application under the impugned order on the ground that no documentary evidence has been produced by the petitioner to prove his illness and no sufficient reasons have been given in the affidavit filed in support of I.A.No.89 of 2012.

7. This Court is of the considered view that the Trial Court has rightly rejected the application and therefore, the decree passed against the petitioner in favour of the respondent, being a money decree which was passed as early as on 05.04.2011, no further indulgence can be granted to the petitioner.

Conclusion:

8. 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.

27.06.2019

nl

Index: Yes/ No

Internet: Yes/No

Speaking Order/Non-speaking Order

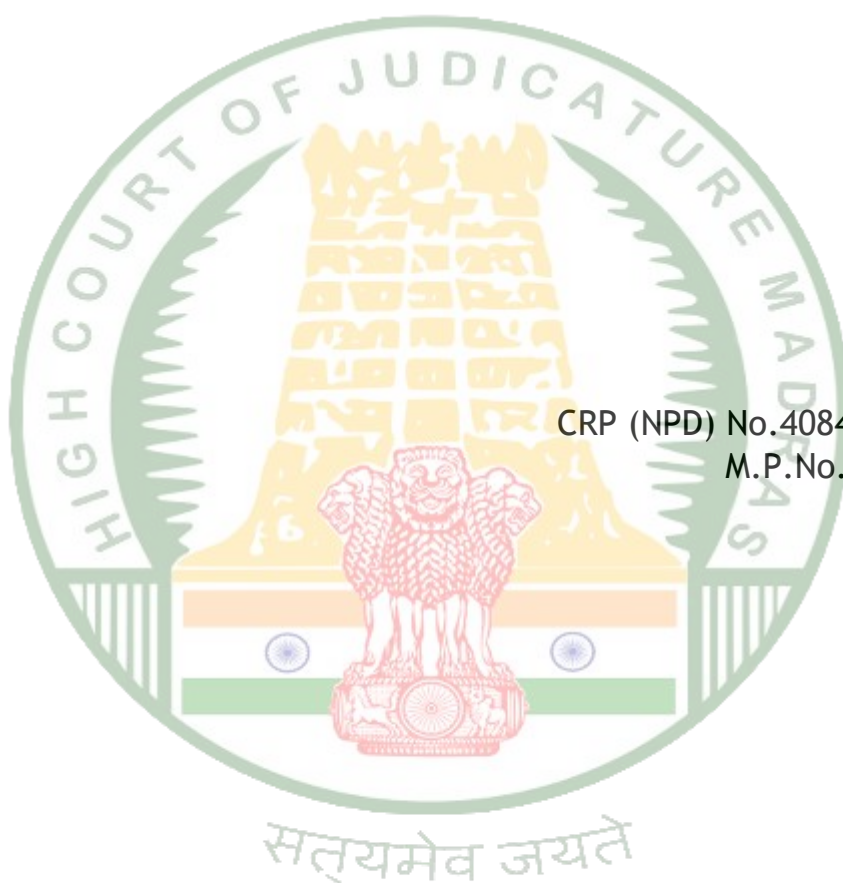
To

The Subordinate Judge, Sankari.

WEB COPY

ABDUL QUDDHOSE, J.

nl

CRP (NPD) No.4084 of 2014 &
M.P.No.1 of 2014

WEB COPY 27.06.2019