

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

C.R.P.(NPD).No.4829 of 2014

N.Duraisamy

... Petitioner

Vs

Radhamani

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and final order dated 17.09.2014 made in I.A.No.95 of 2014 in O.S.No.387 of 2009 on the file of the Sub-Court, Perundurai.

For Petitioner : Mr.Ma.P.Thangavel

For Respondent : Mr.N.Manokaran

ORDER

The present revision has been filed by the petitioner against the fair and final order dated 17.09.2014 made in I.A.No.95 of 2014 in O.S.No.387 of 2009 on the file of the Sub-Court, Perundurai.

2. The said I.A.No.95 of 2014 was filed by the petitioner to condone the delay of 1150 days in filing the application to set aside the exparte decree dated 07.09.2010. However, the said application was dismissed by the Court. It is stated that the petitioner was suffering from jaundice and therefore could not appear though he had engaged a counsel.

3. The learned counsel for the respondent submitted that though the application appears to have been prepared on 16.08.2013 but was filed subsequently only on 28.11.2013 and therefore, the petition was not bonafide. However, on going to the impugned judgment and decree, the suit was decreed exparte after calling the petitioner absent, after recording that the petitioner's advocate was not present. However, there is no discussion in the judgment while decreeing the suit.

4. The learned counsel for the respondent submitted that the petitioner has not taken the court proceedings seriously and therefore deserves no indulgence.

5. The learned counsel for the respondent referred to the

decision of the Hon'ble Supreme Court in the case of **Saroja v. Chinnusamy (Dead) by Lrs. And another [(2007) 8 SCC 329]**, wherein, in paragraph No.15, the decision of this Court in **Arukkani Ammal v.Guruswamy [(1987) 100 LW 707]** was upheld wherein it was observed that even an exparte decree was a decree on merits.

6. The learned counsel also draw the attention to yet another decision of the Hon'ble Supreme Court in the case of **H.Dohil Constructions Co. (P) Ltd., v. Nahar Exports Ltd., [(2014) 9 SCALE 503]**, wherein, a delay of 9 days and the delay of 1797 days in filing the first appeal allowed was set aside by the Hon'ble Supreme Court. In paragraph No.21 the Court held that the principle that the law of limitation is based on sound public policy and therefore in the absence of bona fide reasons, applications for condonation of delay should be strictly construed.

7. I have gone through the facts of the case and the case laws submitted by the learned counsel for the respondent. The decision of the Hon'ble Supreme Court in **Saroja Vs. Chinnusamy** referred to supra is not applicable the facts and circumstances of the case.

8. The said decision was rendered in the context of the doctrine of *res judicata* enshrined under section 11 of the Civil Procedure Code. There ex-parte decree had been passed by the court and thereafter a fresh suit was filed.

9. It was in that context the Court agreed with the view of this court in **Arrukani Ammal Vs Guruswamy** [(1987) 100 LW 707], wherein, it was held that a decree which is passed ex-parte is as good and effective as a decree passed after contests. Before the ex-parte decree is passed, court has to hold that the averments in the plaint and the claim in the suit have been proved. It was in that context, this court had held that it was difficult to endorse the observation made by the Principal District Munsif that such a decree cannot be considered to be a decree passed on merits.

10. The court there held that it is undoubtedly a decree which is passed without contest: but it is only after the merits of the claim of the plaintiff have been proved to the satisfaction of the trial court, that an occasion to pass an ex-parte decree can arise.

11. It is evident that the present case in the judgment dated

07.09.2010 merely records that the defendant was absent and after perusing the material records, the claim of the respondent stood proved and the suit was decreed accordingly. However, there is no semblance of any discussion in the impugned judgment so as to warrant conclusion that the judgement bears any discussion on merits. Consequently, I am of the view that the ex-parte judgment itself is liable to be set aside.

12. Viewed from the said angle, even if the judgment and decree had been appeal against directly, the court would have been compelled to set aside the said judgment and decree and remit the case back to the court below for passing a fresh judgment and deserves on merits.

13. In view of the above discussion, I am inclined to allow this civil revision petition on terms as the delay has not been properly explained. The present civil revision petition stands allowed on the following conditions:-

- i) The petitioner shall deposit the principal amount decreed by the Court below to the credit of the above suit within a period of eight weeks from the date of receipt of a copy of this order ; and
- ii) The petitioner shall also pay a cost of Rs.10,000/-(Rupees Ten

Thousand Only) to the respondent/plaintiff, within a period of eight weeks from the date of receipt of a copy of this order.

14. In default, this revision shall stand dismissed automatically without any further reference to this Court.

15. On producing the proof of deposit and payment of cost, the Sub-Court, Perundurai shall allow the petitioner herein / defendant to file written statement and endeavor to complete the trial within a period of nine months thereafter.

Index:Yes/No
Internet:Yes/No
ssn

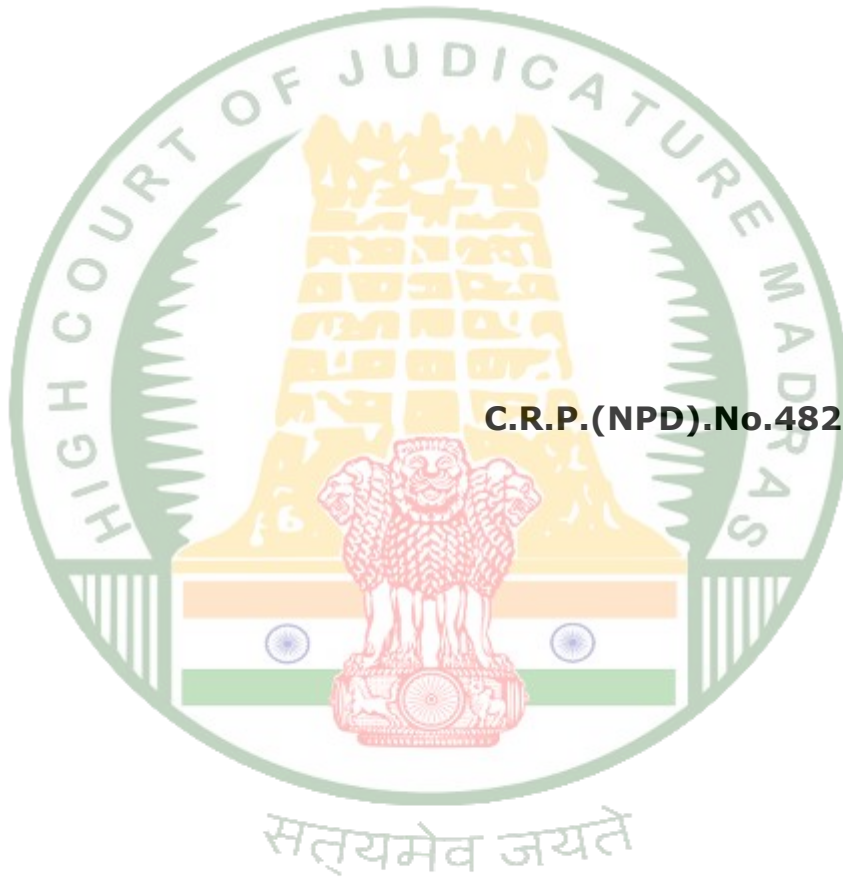
06.03.2019

To
The Sub-Court,
Perundurai.

सत्यमेव जयते
WEB COPY

C.SARAVANAN, J.,

ssn



C.R.P.(NPD).No.4829 of 2014

WEB COPY

06.03.2019