

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2019

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD)No.2404 of 2019
and
CMP.No.15734 of 2019

1.P.Subramani

2.G.Ramachandran

... Petitioners

Vs.

T.M.Sampath (died)

1.T.S.Srinivasan

2.T.S.Balaji

3.Bale Pandian @ Sellapandian

4.Vedammal

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the Docket order dated 11.07.2019 in E.A.No.177/2018 in E.P.No.22/2017 in O.S.No.29/2000 on the District Munsif Court, Thiruvotriyur.

For Petitioner

: Mr.S.P.Sudalaiyandi

ORDER

The revision petitioners are the judgment debtors in E.P.No.22 of 2007. Admittedly, the suit against them was decreed ex-parte on 15.12.2003. They filed a petition to set aside the ex-parte decree on 06.01.2004, but they had not taken any steps to number the same for six years. Thereafter, they approached this Court, by way of Civil Revision Petition, against the return made by the Registry. This Court, by its order dated 28.10.2013 dismissed the civil revision petition holding that the return made by the Registry is correct, for, the petition to set aside exparte decree is not maintainable, without petition to condone the delay in filing the same. Thereafter, the petitioners filed a petition to number the I.A.SR.No.543 of 2010, Old SR.No.130/2004 on the file of the Sub-Court, Ponneri along with condone delay petition and dispose of the same. The trial Court has taken up the condone delay petition on file on 17.12.2013 and the petition was not numbered. Therefore, the petitioners again approached this Court, by way of CRP.No.3110/2017 for numbering the same. This Court, by its order dated 31.08.2017 directed the trial Court to dispose of the Interlocutory Application in I.A.SR.No.543/2010 in O.S.No.29/2000 within a period of two months. However, it appears that the said petition is still pending before the trial Court.

2. During the pendency of the petition to condone the delay in filing the petition to set aside the ex-parte decree, the petitioner filed an execution application before the Execution Court to stay the execution proceedings. The Execution Court has dismissed the same. Aggrieved over the same, the petitioners are before this Court.

3. I have considered the materials on record. Admittedly the ex-parte decree was passed on 15.12.2003 and it is yet to be set aside. The petition to condone the delay in filing the petition to set aside the ex-parte decree is still pending before the trial Court. The petitioner, even after a direction is issued by this Court has not taken steps to expedite the matter, in order to protect his rights before the concerned Court. On the other hand, he seeks stay of execution.

4. The learned counsel appearing for the petitioners would rely on the judgment of this Court reported in **Nazruddin Vs. The Idol of Arulmigu Navaneedha Krishnasami and Durgai Amman Vahaira Temples [1999 MLJ 747]**, wherein this Court has held that during the pendency of the Section 5 Application of the Limitation Act for setting aside the ex-parte decree, reasonable time should be granted to enable the judgment debtor to get further orders from the trial Court. But in the

instant case, the ex-parte decree was passed in the year 2003 and Section 5 application was filed on 20.09.2018 after a period of 15 years. In the considered opinion of this Court, the said period of 15 years, is absolutely not reasonable, but too much unreasonable. The petitioners, till date, despite direction of this Court, are unable to get the condone delay petition disposed of and further orders on the petition filed by them to set aside the ex-parte decree.

5. Therefore, I do not find any merit in the contention that the order of stay will serve any useful purpose to the petitioners to redress his grievances.

6. In such circumstances, I do not find any infirmity in the order passed by the Execution Court. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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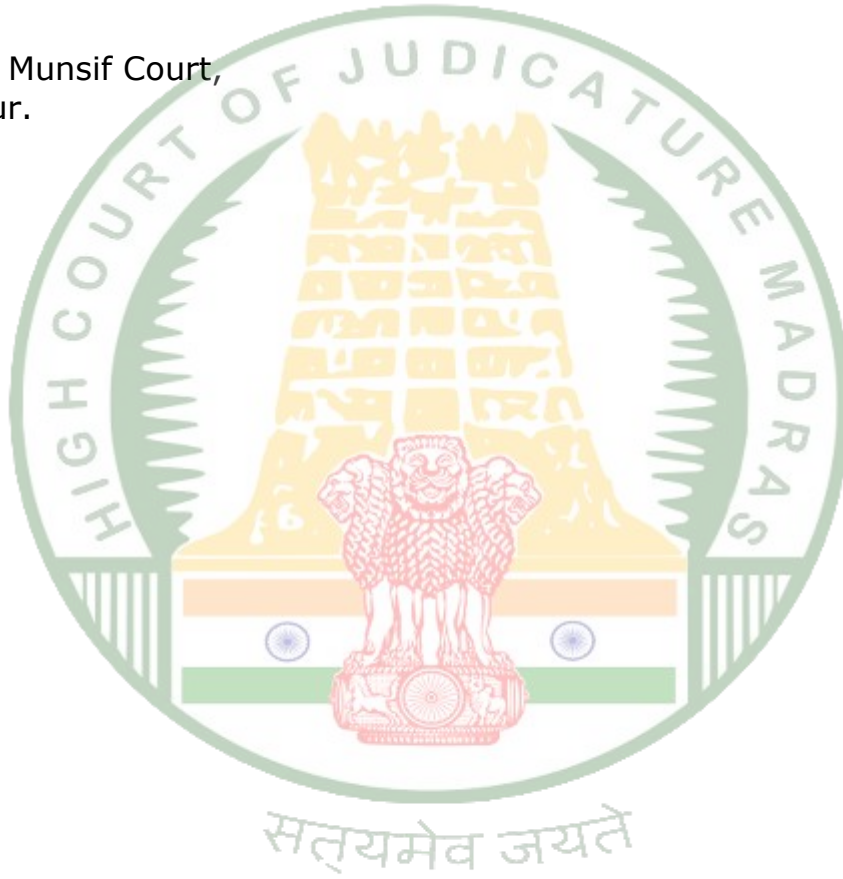
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Index:Yes/No
Internet:Yes/No
Speaking Order/Non Speaking Order

To

The District Munsif Court,
Thiruvotriyur.

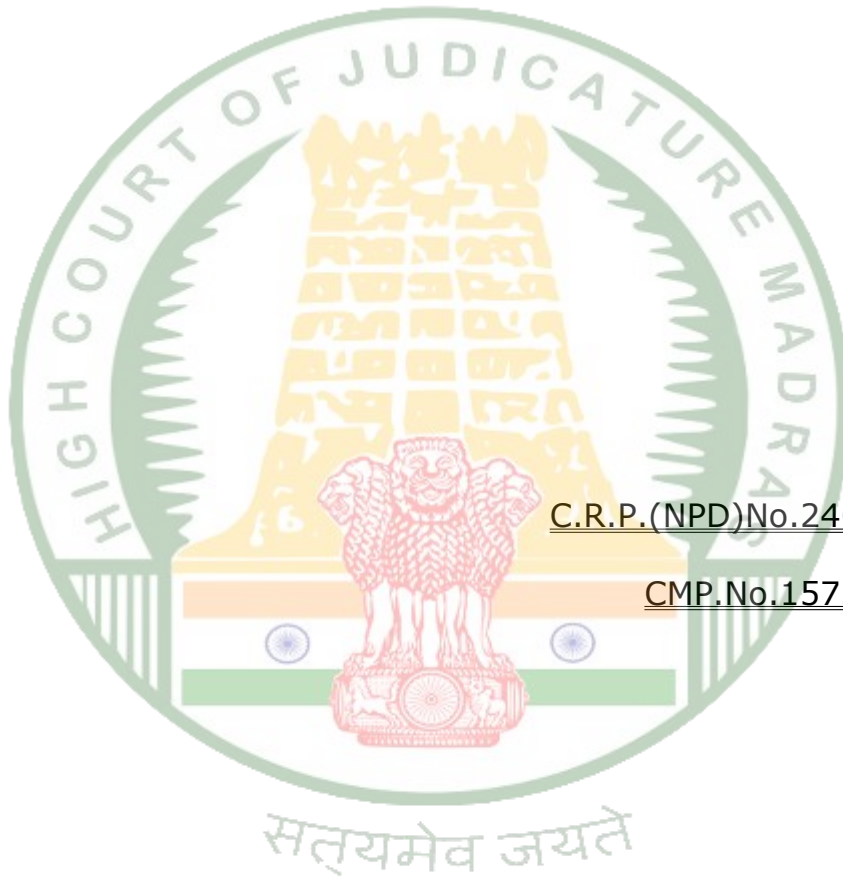


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