

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.3396 of 2019
and
CMP No.22258 of 2019

S.Suseela

.. Petitioner

Vs

C.Sirajudeen

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dated 02.04.2019 made in I.A.No.800 of 2014 in O.S.No.44 of 2010 on the file of Subordinate Court, Pollachi.

For Petitioner : Mr.R.Nandhakumar

ORDER

Aggrieved over the order dated 02.04.2019 passed in IA No.800 of 2014 in OS No.44 of 2010, on the file of the learned Subordinate Judge, Pollachi, the petitioner herein, who is the defendant in the said suit has filed this Civil Revision Petition.

2. Before the trial Court, the respondent herein filed a suit in OS No.44 of 2010, seeking for a direction to the revision petitioner / defendant to pay the suit claim of Rs.4,90,660/- with interest at the rate of 24% per annum on the principal amount of Rs.3,25,000/-.

3. During the course of trial proceedings, on 15.12.2012, an exparte decree has been granted in favour of the plaintiff/respondent herein for the reason that the revision petitioner / defendant, has not appeared before the trial Court.

4. Thereafter, only in the year 2014, the revision petitioner / defendant filed an application before the trial Court under Section 5 of the Indian Limitation Act, seeking to condone the delay of 737 days in filing the application to set aside the exparte decree dated 15.12.2012 passed in OS.No.44 of 2010.

5. The learned Subordinate Judge, Pollachi, after affording an opportunity to the respondent/plaintiff, by an order dated 02.04.2019, allowed the application on condition that the revision petitioner / defendant should deposit 1/3rd of the decree amount, before this Court on

or before 23.04.2019. Aggrieved over the said order, the revision petitioner / defendant is before this Court, with this Civil Revision Petition.

6. In the affidavit filed before the trial Court, the revision petitioner/defendant has stated that only due to her ill health, she has not appeared before the trial Court on 15.12.2012. Further, she has stated that she was of the impression that the above suit was disposed of on 02.03.2011 and there is no case pending against her.

7. Resisting the claim made by the revision petitioner/defendant, the respondent in the Civil Revision Petition filed a counter affidavit before the trial Court. In the counter affidavit, he has said that the reasons adduced by the revision petitioner / defendant is not sufficient to condone the delay of 737 days.

8. Today, when the Civil Revision Petition came up for admission, the learned counsel appearing for the revision petitioner was present and would contend that the respondent in the Civil Revision Petition, apart from filing the suit pertaining to this Civil Revision Petition, has filed one another criminal case in C.C.No.376 of 2008, in which, the petitioner herein, was

acquitted on 28.12.2016.

9. Now, on considering the said submission and the facts pleaded before this Court, I am of the view that acquittal of the accused in the criminal case, is not a ground for deciding the suit filed, based on the promissory note. In fact, the respondent in this petition, filed the suit in the year 2010. Subsequently, an exparte decree was granted in the year 2012 and thereafter, the revision petitioner / defendant filed an application to set aside the exparte decree along with an application under Section 5 of the Indian Limitation Act, only in the year 2014. Thereafter, for a period of five years, the said application was kept pending with the learned Subordinate Judge, Pollachi, without any order. So, the said circumstances shows that the revision petitioner / defendant has attempted to protract the proceedings before the trial Court.

10. Moreover, perusal of the impugned order shows that the learned Subordinate Judge, Pollachi, has considered the issue only in favour of the revision petitioner/defendant. The condition imposed to deposit 1/3rd of the decree amount, before the trial Court, is not too harsh. Since the matter pertaining to the Civil Revision Petition, is pending for nine years, it

is appropriate to impose such condition, for allowing the application filed to condone the delay. In otherwise, I am of the opinion that there is no material irregularity found in the order passed by the learned Subordinate Judge, Pollachi. **Accordingly, the Civil Revision Petition is dismissed.** However, the revision petitioner / defendant is permitted to comply with the condition imposed by the learned Subordinate Judge, Pollachi, vide order dated 02.04.2019, made in IA No.800 of 2014 in O.S.No.44 of 2010, within a period of four weeks from today. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

18.10.2019

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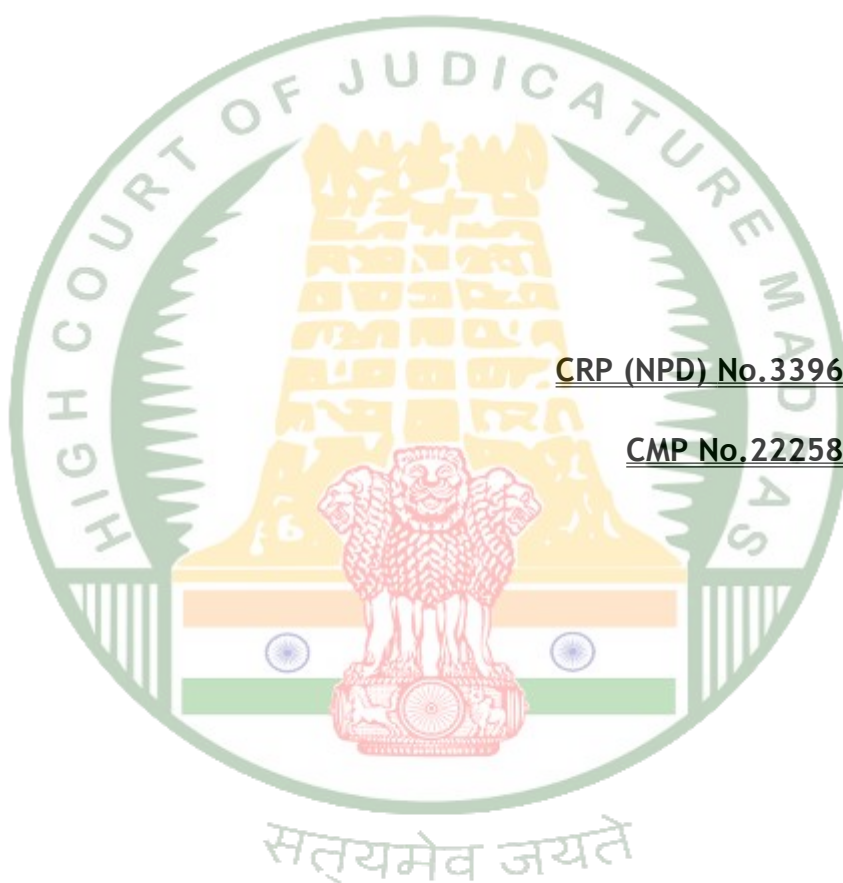
The Subordinate Court, Pollachi.

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R.PONGIAPPAN, J.,

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