

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2019

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

CRP (NPD) NO.2323 OF 2017
AND CMP NO.12186 OF 2017

Kanniammal

... Petitioner

Versus

A.Krishnan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 14.06.2011 passed in I.A.No.286 of 2010 in O.S.No.192 of 2008 on the file of Subordinate Court, Ponneri.

For Petitioner : Mr.P.S.Amalraj
For Respondent : Mr.P.Rajkumar Pandian

ORDER

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Aggrieved over the order dismissing the interlocutory application filed under Section 5 of the Limitation Act, to condone the delay of 445 days in filing the application under Order 9 Rule 13 CPC, to

set aside the *exparte* decree, the petitioner / defendant is before this Court.

2. The respondent/plaintiff filed a suit for specific performance, in which, the petitioner/defendant entered appearance through an Advocate and filed written statement agreeing the execution of sale agreement and receipt of the advance amount. Thereafter, she remained *exparte* and the suit was decreed *exparte*. Pursuant to the decree, the respondent/decreed holder, filed an execution petition in the year 2009, in which also, the petitioner/defendant, remained *exparte*. Thereafter, in the year 2010, the petitioner came out with an interlocutory application to set aside the *exparte* decree with a delay of 445 days. In the meanwhile, the Execution Court executed the decree and now the execution proceedings is at the stage of taking possession of the property. The reason attributed by the petitioner is that her counsel has not intimated properly. Even assuming that during the pendency of the trial, her counsel has not intimated the proceedings, on the date of receipt of notice in the execution petition, in the year 2009, the petitioner should have been vigilant and appeared before the Court for prosecuting the case. But, she remained *exparte* in the execution

petition also and does not take any steps to appear before the Court. When the petitioner is not vigilant enough, but lethargic, the Court cannot come to her rescue. The delay of 445 days is not explained properly by the petitioner.

3. In such circumstances, the Trial Court has rightly dismissed the interlocutory application filed to condone the delay in filing the petition to set aside the *ex parte* decree. I do not find any valid reason to interfere with the order passed by the Trial Court. At the final stage of delivery of possession in the execution proceedings, the petition filed by the petitioner to set aside *ex parte* decree passed against her, does not reveal any *bonafide* action of the petitioner.

4. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

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23.07.2019

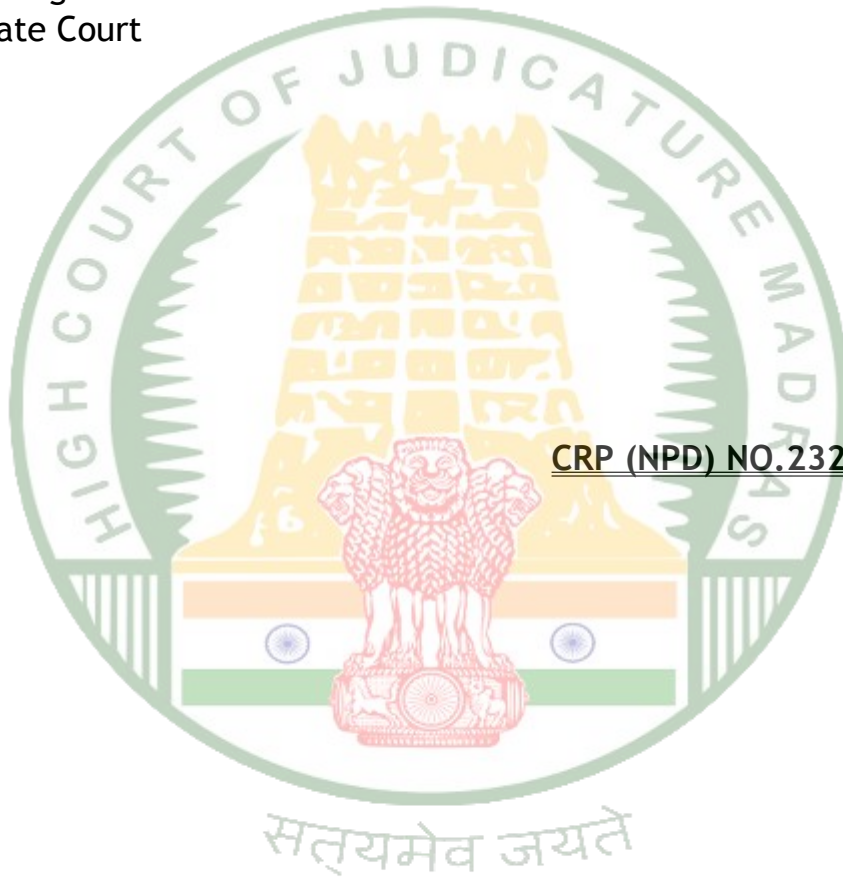
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M.GOVINDARAJ, J.

TK

To

The Sub Judge
Subordinate Court
Ponneri.



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