

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

CRP.(NPD)No. 889 of 2017
and
C.M.P.No.4365 of 2017

H. Ruhit Basha ... Petitioner

Versus

Syed Jaffar (Deceased)

1. Saheda Begum

2. Abdul Rasheed

3. Munni Fathima

(RR1 to 3 are the Legal heirs of Late Syed Jaffar,
impleaded vide order dated 16.02.2017 in
CMP No.2624 of 2017 in CRP(NPD)

SR No.63494 of 2016 ... Respondents

Civil Revision Petition filed under Article 227 of Constitution of India
praying to set aside the fair and decretal order dated 10.03.2016 passed in I.A.
No.538 of 2015 in O.S. No.225 of 2019 on the file of the Additional District and
Sessions Court, Kancheepuram at Chengalpattu and allow this Civil Revision
Petition.

For Petitioner : Mr.Inamdar Ameenur Rahman

For Respondents : No appearance for RR1 and 3

Mr.M.Selvam for R2

ORDER

Challenge in the present Civil Revision Petition is an order condoning the

<http://www.judis.nic.in> delay of 226 days in filing the application to set aside the ex-parte decree, dated
13.06.2014.

2. The learned counsel for the petitioner submits that the judgment and decree, dated 13.06.2014, itself has been passed on merits and as such an application to set aside the ex-parte order will not arise. Even otherwise, he would submit that when the main application itself is not maintainable, the trial Court was not justified in allowing the application to condone the delay in filing an application to set aside the decree. In support of his contention, the learned counsel for the petitioner would also rely upon a decision of this Court reported in **CDJ 2013 MH 3093 (K.M. Thamburajan Versus Trichy Care (P) Ltd.)**.

3. I am not able to accept such a contention. What is under challenge in the present application is only with regard to delay under Section 5 of the Limitation Act and it is the duty on the part of the Court to look into the reasons given for the delay and to determine as to whether such reasons can be a sufficient cause, as defined under Section 5 of the Limitation Act. In the instant case, the reasons cited by the respondents herein for the delay is that they were not aware of the proceedings being transferred from one Court to the other Court and no notice was given to them. The trial Court had also observed that there was no notice sent to the respondents herein and as such they were not aware of the proceedings. The trial Court had also taken into consideration that an application under Section 5 of the Limitation Act requires liberal consideration.

4. This is a case, where the suit has been initiated for recovery of possession. The defence taken by the respondents also seems to be that a part of the sale consideration is yet to be paid. As such, the learned counsel for the

respondents would submit that they have a triable and arguable issue before the Court.

5. I do not intend to go into the merits of the case. In my view, since the reasons for the delay has been properly explained and accepted by the trial Court also, it would be appropriate to grant liberty to the petitioner to raise all his objections when the main application to set aside the order of the lower Court is filed.

6. In the light of the above observations, I do not find any infirmity in the order, dated 10.03.2016 in I.A. No. 538 of 2015 in O.S. No.225 of 2019 on the file of the Additional District and Sessions Court, Kancheepuram.

7. Nevertheless, since the decree was passed in the year 2014, the trial Court shall endeavour to dispose of all interim applications filed pursuant to the decree as expeditiously as possible, in any event within a period of 90 days from the date of receipt of a copy of this order.

8. With the above observations, the Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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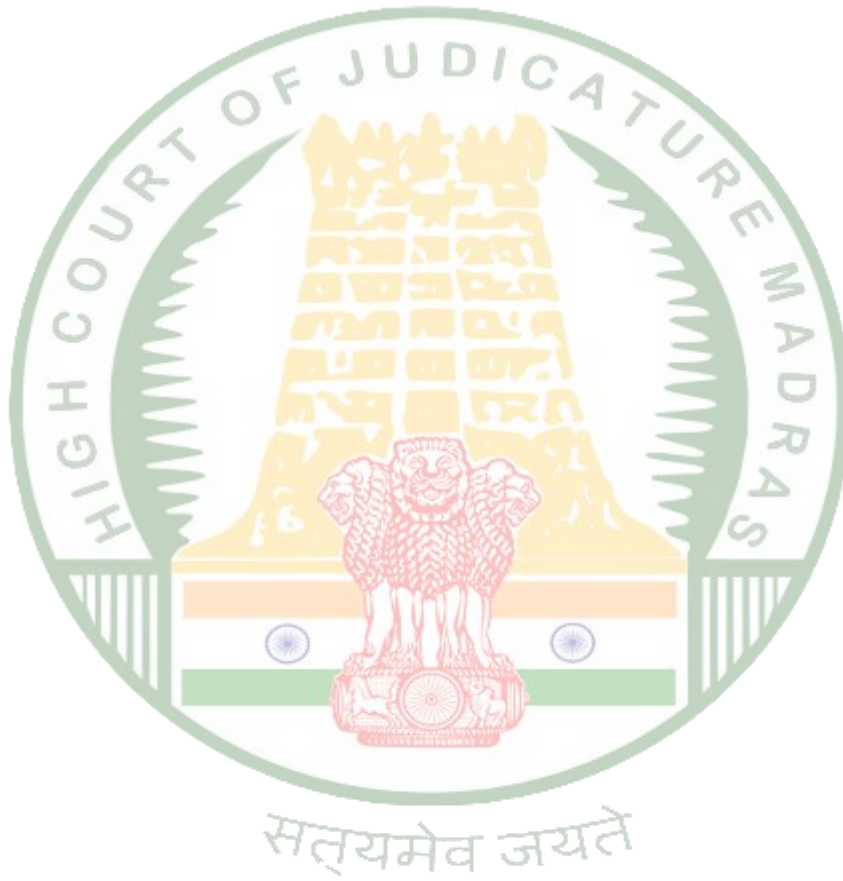
Index: Yes/No

Internet: Yes/No

Speaking order / Non speaking order

To

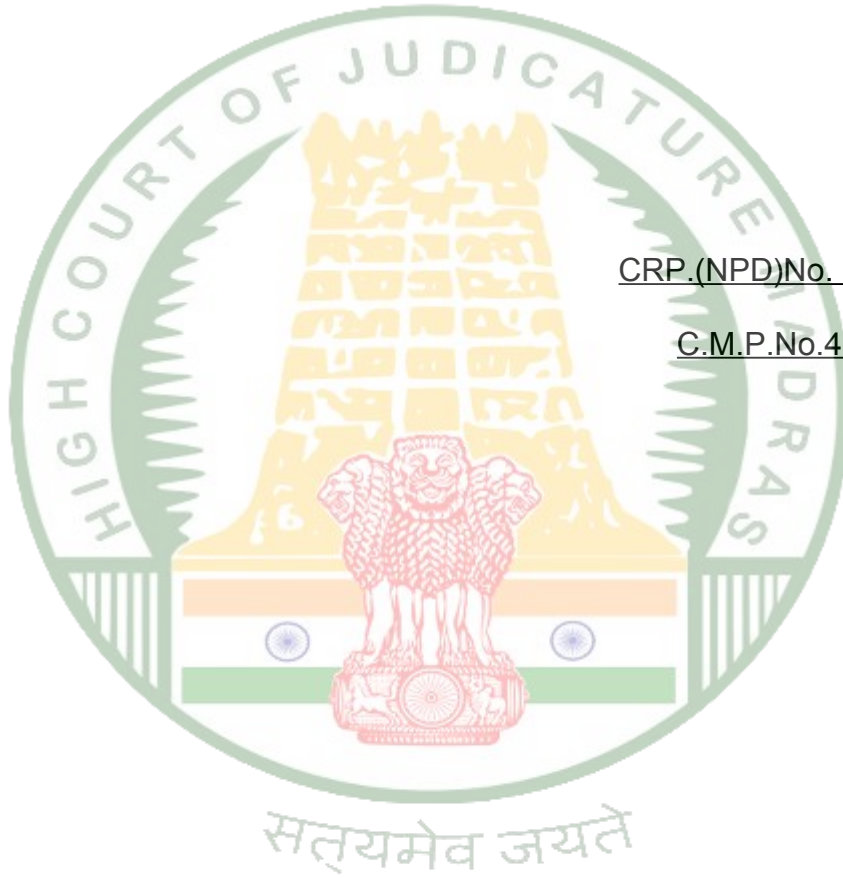
The Principal Subordinate Judge, Namakkal.



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M.S.RAMESH, J.

vsi2



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