

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

CRP.(PD)Nos.2947 & 2948 of 2018

and

CMP.No.17254 of 2018

L.Karthikeyan

.. Petitioner in both CRPs

Vs

A.Venkatachalamurthy

...Respondent in both CRPs

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India challenging the order dated 05.07.2018 passed in I.A.Nos.327 & 328 of 2018 respectively, in O.S.No.119 of 2012 by the District Munsif, Ponneri dismissing the restoration petition.

For Petitioner : Mr.J.Arun Prasad  
in both CRPs.

For Respondent : No appearance  
in both CRPs.

COMMON ORDER

The above Civil Revision Petitions are filed challenging the orders passed in I.A.Nos. 327 and 328 of 2018 which are two applications filed for restoring the I.A.Nos. 812 and 813 of 2017 respectively which were filed to re-open and re-call the defendant's side witness.

2. The facts in brief are as follows:

The suit O.S.No.119 of 2012 was filed by the revision petitioner/plaintiff on the file of the learned District Munsif, Ponneri for a permanent injunction restraining the defendants from alienating or encumbering the suit property. When the matter was posted for cross examination of defendants side witness DW1, the plaintiff did not appear and therefore, it was closed. The plaintiff thereupon, filed applications in I.A.Nos.812 and 813 of 2017 for re-opening and re-calling DW1. In the said applications, the defendant has stated that he was unwell and therefore, could not appear before the Court. Thereafter, when the matter was posted on 03.01.2018 for the petitioner's side arguments in the re-call petition, he was once again not present and consequently, both applications were dismissed for default.

3. I.A.Nos. 327 and 328 of 2018 have been filed to restore I.A.Nos.812 and 813 of 2017. In the said applications also the revision petitioner/plaintiff has pleaded that since he was unwell, he could not contact his advocate and bring him for the cross examination of the defendant's witness. Therefore, the non-appearance on his side is not willful, but, for the reasons stated therein.

4. The learned District Munsif, Ponneri however, by her order dated 05.07.2018 was pleased to dismiss the said applications stating that the revision petitioner/plaintiff was in habit of allowing the matters to be dismissed for default and thereafter, the revision petitioner/plaintiff filed petitions to re-call and re-open which was nothing but sheer abuse of process of law. The learned Judge has also observed that the litigant has to be vigilant and if not, he must suffer from consequences. The said applications are the subject matter of challenge now before this Court.

5. Heard the learned counsel appearing for the revision petitioner. The respondent though served has not entered appearance either in person or through the counsel. Therefore, this Court has taken up the revisions itself and passing orders after hearing the learned counsel for the revision petitioner.

6. It is no doubt seen from the records that the revision petitioner/plaintiff is in the habit of allowing the matters to be dismissed for default and has adopted a lackadaisical attitude in prosecuting the petitions. However, considering the fact that the applications have been moved immediately and the suit is one for a

permanent injunction in respect of the petitioner's property which according to him, the defendant was trying to alienate by creating sham and nominal documents, this Court is inclined to set aside the orders passed by the learned District Munsif, Ponneri and give a chance to the revision petitioner/plaintiff to contest the matter. However, considering the fact that the revision petitioner/plaintiff is a habitual defaulter, this Court is disposing of the revision petitions on terms. The revision petitioner/ plaintiff shall within two weeks of the matter being listed before the learned District Munsif, Ponneri pay a sum of Rs.5,000/- to the respondent and only on compliance of the said order, the learned District Munsif, Ponneri shall take up the Interlocutory Applications in I.A.Nos.327 and 328 of 2018 for enquiry. In the event of the revision petitioner/plaintiff not making the payment, then this order shall automatically stands withdrawn.

7. That apart, in the event of the revision petitioner/plaintiff failing to appear before the Court for arguments in I.A.Nos.327 and 328 on the date fixed by the Court, then, the original orders in the said I.A.Nos. shall automatically stand revived.

8. The Civil Revision Petitions are disposed of in the above grounds. No costs. Consequently, the connected Miscellaneous Petition is closed.

25.03.2019

mbi/dua

Index: Yes/No  
Internet: Yes/No  
Speaking order / Non-speaking order

To

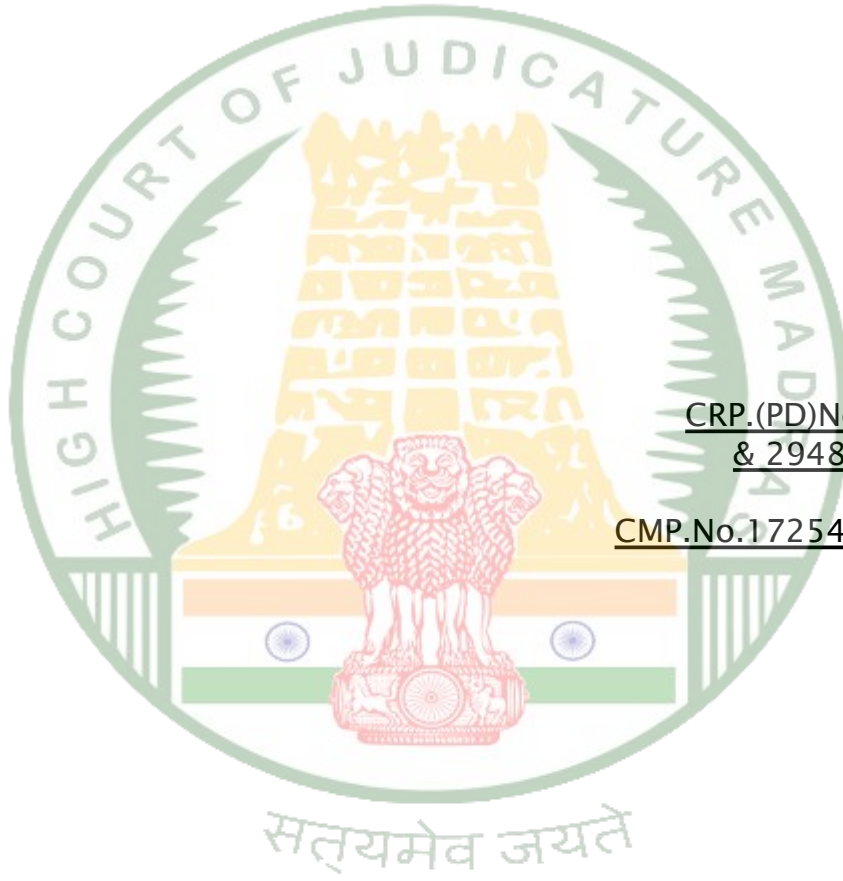
The District Munsif Court,  
Ponneri.



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P.T.ASHA, J.

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