

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.4316 of 2010
and
MP.No.1 of 2010

1.Shanthi

2.S.Ravindran

..Petitioners/
Defendants 2 & 3

Vs.

1.M.Selvaraj

..1st Respondent/
Plaintiff

2.V.Veerasekar

..2nd Respondent/
1st Defendant

PRAYER: This Civil Revision Petition has been filed under Section 115 of CPC, against the fair and decreetal order dated 10.08.2010 in dismissing CMP.No.953 of 2009, filed under Section 5 of Limitation Act to condone the delay in filing the appeal in A.S.SR.No.33230 of 2009, on the file of the learned Principal Judge, City Civil Court, Chennai.

For Petitioners : No appearance

For R1 & R2 : Not ready in notice

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Principal Judge, City Civil Court, Chennai, in CMP.No.953 of 2009, filed under Section 5 of Limitation Act to

condone the delay in filing the appeal in A.S.SR.No.33230 of 2009, dated 10.08.2010.

2 The defendants 2 & 3 in the suit O.S.No.4423 of 2002 are the revision petitioners.

3 Brief facts of the case:

(i) First respondent herein has filed a suit in O.S.No.4423 of 2002, before the VIII City Civil Court, Madras, for specific performance of the suit Sale Agreement; for declaration of Sale Deed; for permanent injunction. During the pendency of the suit, revision petitioners/defendants 2 & 3 viz., Shanthi & Ravindran have entered into transaction concerning the suit property with respondents herein viz., Veerasekar & Selvaraj and sold the same. Hence, I.A.No.1974 of 2004 has been filed to implead the revision petitioners as second and third defendants in the suit and the same was allowed. As written statement was not filed by the revision petitioners/defendants 2 & 3, they were set ex-parte. The first defendant was also remained ex-parte and the said suit was decreed on 23.03.2006 as prayed for and the plaintiff was given two months time for payment of balance of sale consideration.

(ii) At that time, the revision petitioners have filed an application in I.A.No.278 of 2017 to set aside the ex-parte decree and same was dismissed on 01.11.2007. Thereafter, plaintiff levied execution in E.P.No.1943 of 2008 and he has paid balance of amount. At this juncture, A.S.SR.No.33230 of 2009 was filed by revision petitioners/defendants 2 & 3 with a delay of 1202 days. Thereafter, the revision petitioners have filed a petition in CMP.No.953 of 2009 to condone the delay of 1202 days in filing A.S.SR.No.33230 of 2009 to set aside the order of ex-parte decree dated 23.03.2006, passed in O.S.No.4423 of 2002. On perusing the affidavit filed, the Lower Appellate Court has dismissed the petition and hence, the Civil Revision Petition.

4 No appearance on behalf of the petitioners.

5 Perused the affidavit filed before the Trial Court.

6 On a perusal of the affidavit filed before the Lower Appellate Court, it is seen that in the absence of any positive averment regarding the delay of 1202 days in filing A.S.SR.No.33230 of 2009 to set aside the order of ex-parte decree, the Lower Appellate Court has rightly rejected the contention of the

revision petitioners and there is nothing worthwhile for considering the reasons as sufficient cause to condone the delay of 1202 days.

7 With the above observations, this Civil Revision Petition stands dismissed and the order passed by the learned Principal Judge, City Civil Court, Chennai, in dismissing CMP.No.953 of 2009, to condone the delay in filing the appeal in A.S.SR.No.33230 of 2009, dated 10.08.2010 is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

05.02.2020

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Speaking Order:Yes/No

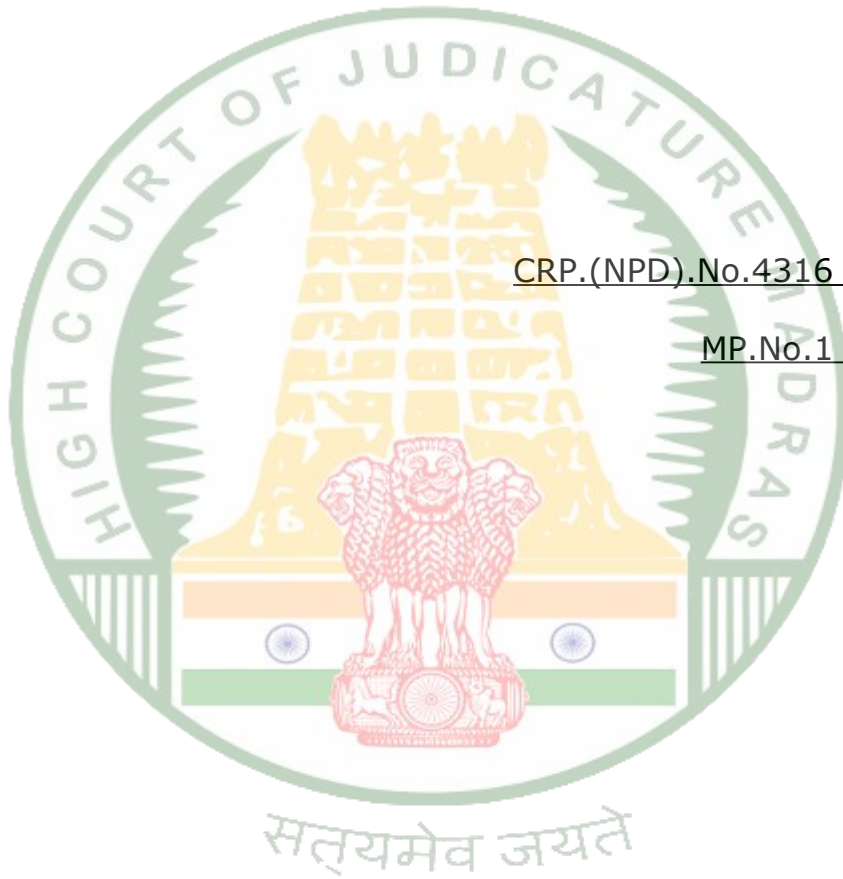
To
The Principal Judge, City Civil Court, Chennai.

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RMT.TEEKAA RAMAN., J.
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