

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 04.02.2020

Pronounced on : 10.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.4710 of 2011
and
Mp.No.1 of 2011

Raji ... Petitioner

Versus

N.Manjula ... Respondent

Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the order dated 11.10.2011 made in I.A.No.388 of 2006 in O.S.No.20 of 2003 passed by the learned District Munsif Judge, Arakkonam.

For petitioner : Mr.V.P.Rajendran

For Respondent : Mr.G.Jeremiah

ORDER

The defendant in the suit O.S.No.20 of 2003 is the revision petitioner herein.

2. The respondent/plaintiff filed the suit for declaration of title and for mandatory injunction and to remove the superstructure put up by the defendant in the suit schedule property. Even though defendant entered

appearance, he did not file the written statement. Therefore, the suit was listed for hearing on 05.12.2003 for filing written statement and the same was not filed. Therefore, the defendant was called absent and set ex-parte and an exparte decree was passed on 07.01.2004.

3.In order to set aside the a petition was filed under Order IX and Rule 9 of CPC., for condoning the delay of 968 days in filing an application to set aside the exparte decree. The application in I.A.No.388 of 2006 to condone the delay of 968 days was filed on the premises that the petitioner/ defendant suffered from kidney stone ailment and due to such ill health, he did not give any instructions to the Advocate to file written statement. Further, the brother-in-law of the defendant married the daughter of the plaintiff and due to the assurance given by one Selvam that he will take efforts for a settlement of the case, he has not persuaded the matter. Counter statement was filed by the plaintiff disputing the above fact. The learned Judge, dismissed the petition to condone the delay of 968 days. Against which, the present Civil Revision Petition.

4.Heard both sides and perused the records.

5.The suit was filed for declaration of title and mandatory injunction to remove the superstructure. The reason assigned for condoning the delay of 968 days is that the petitioner was not well, due to the treatment taken

for stone in his kidney. The other reason is brother-in-law of the defendant married the daughter of the plaintiff and one Selvam has given assurance for settlement of the case.

6.Per contra in the counter statement the plaintiff stated her daughter though given in marriage to the brother-in-law of the defendant, after the exparte decree, the defendant assured the plaintiff that he will not proceed with the case and promised to deliver vacant possession of the property, but he failed to do so and contested the case.

7.Though the medical illness suffered by the petitioner was stated as a reason for 968 days of delay, no sufficient document has been filed before the Court below, hence, the Court below has rightly observed that the statement of the petitioner/defendant is not worthy of consideration. Accordingly rejected the said plea. Furthermore, the Court below has also found that when the petitioner/defendant has deposed and admitted that he was pursuing the suit in O.S.No.208 of 2000 from the date of filing of the suit to till this date then the contention of the petitioner that due to his treatment, he could not pursue the present suit is found to be strange one. The case records reveals that in the above suit after the petitioner has entered appearance through his counsel on 03.06.2003 the above suit for adjourned for filing written statement on 25.04.2003, 21.04.2003, 18.06.2003, 14.07.2003, 13.08.2003, 17.09.2003, 17.10.2003,

21.11.2003 and on 05.12.2003. For non filing of written statement the petitioner herein was set exparte and thereafter the case was posted for recording exparte evidence on 19.12.2003 and on 07.01.2004 exparte decree was passed. The petitioner herein has not explained the period from which he had been taking treatment and when he had recovered from the alleged illeness. Further, it is stated that one Selvam said to have given assurance to the petitioner herein to settle the case and therefore the petitioner has not pursued the suit. But, he has not examined him. Non-examination of said Selvam also throws doubt on the version of case.

8.Thus, this Court finds that in the absence of any explanation for condoning the delay, the Trial Court has rightly come to the conclusion that sufficient cause for condoning the delay of 968 days is not shown in the manner known to law and accordingly rejected the petition. Thus, the Civil Revision Petition is dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

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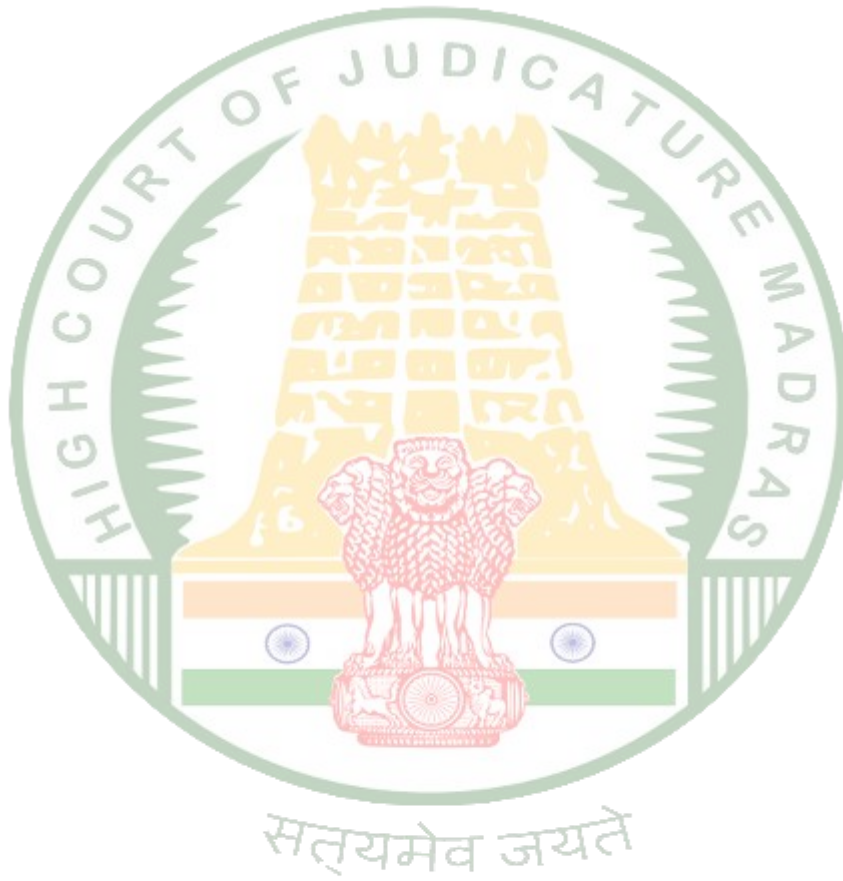
10.02.2020

Index : yes/no
Internet : yes/no
Speaking/Non-Speaking order

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To

The District Munsif Judge, Arakkonam.



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RMT.TEEKAA RAMAN,J.,

klr



Pre-delivery order in
CRP.(NPD).No.4710 of 2011
and
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