

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.1371 of 2018 and
CMP No.7389 of 2018

L.Elangovai

... Petitioner

Vs

Kumaravel

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 21.11.2017 passed in IA.No.330 of 2017 in O.S.No.170 of 2016 on the file of the learned II Additional Subordinate Judge, Villupuram.

For Petitioner : Mr.V.G.Natarajan

For Respondent : Mr.NA.Malai Saravanan

ORDER

The petitioner who is a plaintiff in O.S.No.170 of 2016 challenges an order, condoning the delay of 280 days in seeking to set aside an exparte decree passed in the said suit, on condition that the

respondent/defendant should pay a cost of Rs.2,500/-.

2. The suit was one for specific performance. There was an exparte decree on 05.12.2016. The defendant sought to set aside an exparte decree after a delay of 280 days. He came forward with an application in I.A No.330 of 2017, seeking condonation of delay of 280 days in filing an application to set aside the exparte decree.

3. The main contention of the defendant was that the suit summons were not served on him and only after notice in the execution petition, he came to know about the exparte decree and has filed the application to set aside the exparte decree along with an application for condonation of delay on 11.10.2017.

4. The trial Court upon an examination of the Court records has found that the fact whether the summons were properly served on the defendant itself is doubtful. Upon rendering such a finding, the learned trial Judge concluded that the defendant has explained the reasons for the delay. The Court however imposed a cost of Rs.2,500/- on the defendant and directed the defendant to pay the said cost on or before 28.11.2017.

Since the plaintiff refused to receive the cost, the cost was deposited in

Court on 23.11.2017 and on 28.11.2017, the learned trial Judge allowed the application recording that the condition has been complied with. It is against the order condoning the delay upon condition, the revision has been preferred by the plaintiff.

5. I have heard Mr.V.G.Natarajan, learned counsel appearing for the petitioner and Mr.NA.Malai Saravanan, learned counsel appearing for the respondent.

6. Mr.V.G.Nararajan, learned counsel appearing for the petitioner would vehemently contend that the fair order of the trial Court is dated 21.11.2017. But the decreetal order is dated 17.11.2017. He would also submit that there is no prayer for condonation of delay in the petition filed in I.A.No.330 of 2017.

7. Considering the above claims of the learned counsel, I had summoned the records from the Courts below. I find that I.A.No.330 of 2017 has been filed seeking condonation of delay of 280 days in filing the application to set aside the exparte decree. The said petition was allowed on 21.11.2017, on condition that the petitioner therein /

defendant pays a sum of Rs.2,500/- towards cost on or before 28.11.2017. On 28.11.2017, the Court has recorded the fact that the counsel for the plaintiff has refused to receive the cost and the cost has been deposited on 23.11.2017 itself. After recording the said compliance, the learned trial Judge had allowed the application on 28.11.2017. Though the certified copy of the decreetal order that has been produced along with the revision, reads as if it is dated 17.11.2017, it is probably a mistake as the original records show that the matter was posted on 17.11.2017 for orders and it was adjourned on the ground orders not ready to 21.11.2017. Therefore, the second submission of the learned counsel that there are two orders one on 17.11.2017 and other on 21.11.2017 is not correct. It is a typographical error which the learned counsel seeks to take advantage of.

8. On the claim that the prayer in I.A.No.330 of 2017 is not for condonation of delay, I find that if the counter filed by the defendant before the trial Court, she has specifically stated that the petition for condonation of delay of 280 days is not maintainable. This itself shows that she was aware of the fact that I.A.No.330 of 2017 was an application for condonation of delay. The records also reveal that it is an application

for condonation of delay. Hence, I do not find any merits in the revision.
The revision therefore fails and it is accordingly dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Speaking order / Non Speaking order
vum

To

1. The II Additional Sub Judge, Villupuram.

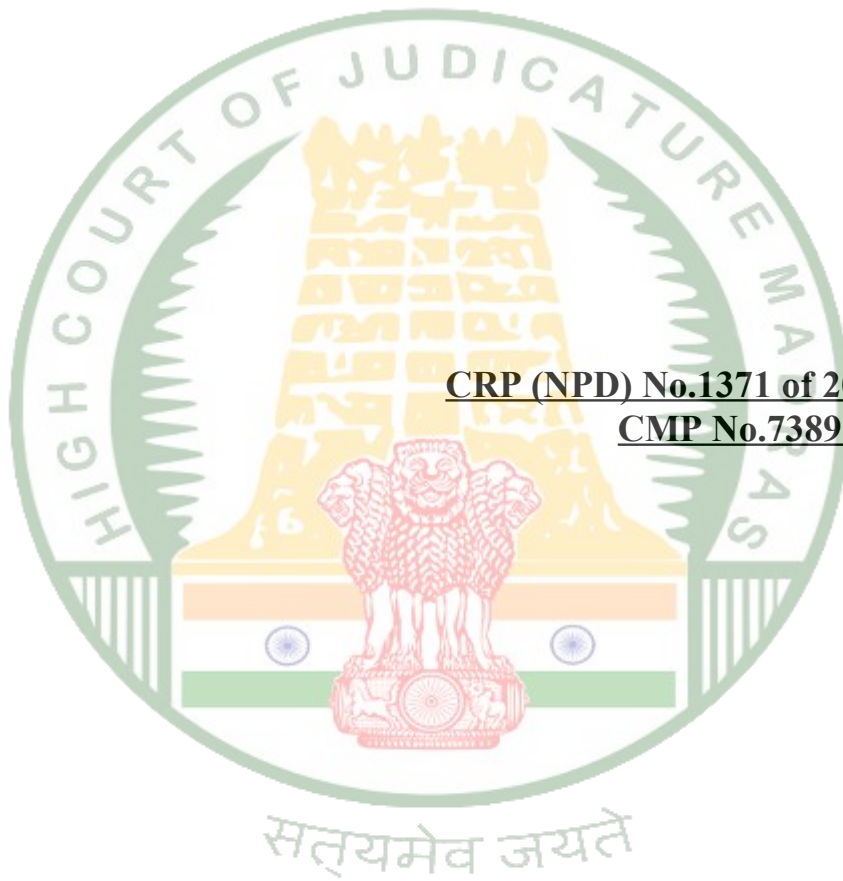


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R.SUBRAMANIAN, J.

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