

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.R.P(NPD).No.792 of 2020
and
C.M.P.No.4251 of 2020

1. Mrs. SaleemaYacoob

2. K. Bathoola

... Petitioners

Vs.

Hazrath Neelam Basha Dargah &
Masjid Wakf,
rep. by its Hereditary Muthavalli
Mr.G.Gulab Ali Shakhaderi,
No.65, Neelam Basha Dargah,
Dr. Besant Road, Ice House, Triplicane,
Chennai - 600 005

... Respondent

PRAYER : Civil Revision Petition filed under article 227 of Constitution of India to set-aside the fair and decreetal order dated 13.02.2019 passed in new I.A.NO.160 of 2018 in O.S.No.67 of 2018 (formerly O.S.No.3315/2017) on the file of

the Hon'ble Wakf Tribunal, Chennai.

For Petitioners : Mr. J.Jaseem Mohammed

ORDER

This revision petition has been filed against the order dismissing the petitioners' application filed under Order 9 Rule 13 CPC to set aside the exparte decree.

2. The petitioners are the defendants in the suit. The respondent/plaintiff filed a suit for permanent injunction restraining the petitioners/defendants from disturbing the plaintiff's possession and in the said said suit exparte decree came to be passed on 11.12.2017. To set-aside the same, a petition has been filed under Order 9 Rule 13 CPC and that application came to be dismissed on 13.02.2019. Now, challenging the same, the present revision has been filed.

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3. The learned counsel for the petitioner would submit that in the above suit, no suit summons have been served on the petitioners and the plaintiff has deliberately given a wrong address and thereafter, taken a substituted service and based on that exparte decree has been passed. The petitioners came to know about the same only in the year 2018. Hence, the application has been filed in time, i.e., from the date of their knowledge about the exparte decree.

4. Heard the learned counsel for the petitioner and perused the materials available on records carefully.

5. Even though exparte decree has been passed on 11.12.2017, the present application to set aside the exparte decree has been filed only on 12.08.2018 without filing any application to condone the delay under Section 5 of the Limitation Act. The trial Court dismissed the application holding that

without the application for condone the delay, the application under Order 9 Rule 13 is not maintainable.

6. Even assuming that the petitioners have not received suit summons, when the application was filed beyond the period of limitation, they have to file an application under Section 5 of the Limitation Act, explaining the reason for the delay and also their knowledge about the exparte decree. It is for the concern Court to decide whether the cause shown by the petitioner is bonafide and acceptable. Instead the petitioners cannot maintain this application under Order 9 Rule 13 CPC, to set aside the exparte decree. The trial Court rightly dismissed the application. I find no illegality or irregularity in the order passed by the trial Court and I find no merit in the revision.

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7. Accordingly, the Civil Revision Petition is dismissed. However, liberty is given to the petitioner to file an application

under Order 9 Rule 13 CPC along with a petition to condone the

delay in filing the petition, under Section 5 of the Limitation Act.

No costs. Consequently, connected miscellaneous petition is closed.

24.02.2020

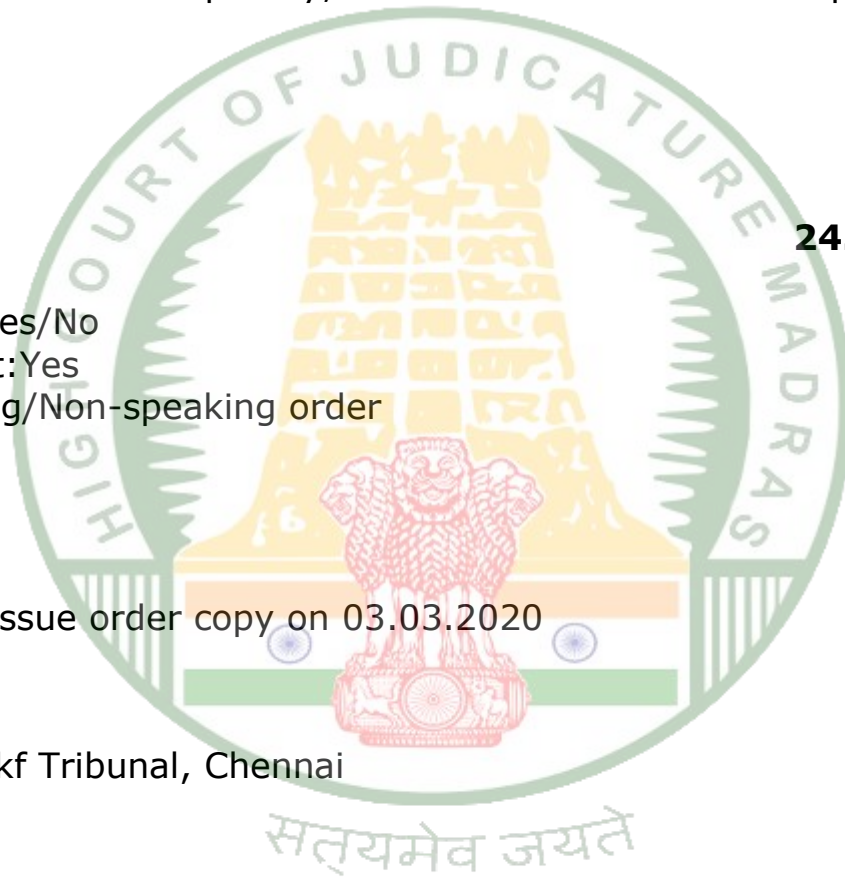
Index:Yes/No
Internet:Yes
Speaking/Non-speaking order

mrp

Note : Issue order copy on 03.03.2020

To

The Wakf Tribunal, Chennai



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V.BHARATHIDASAN, J

mrp



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