

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP NPD. No.146 of 2018
and CMP No.750 of 2018

C.Jayaraman

.. Petitioner

Vs.

1. Srinivasan

2. Ammani Ammal

A.V.Dayasekaran (Deceased)

Dhanalakshmi (Deceased)

3. Vijayaraghavan

4. Suganya

..Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside order dated 25.10.2017 passed IA No.1274 of 2016 in E.J.No.6 of 1987 on the file of the Court of Registrar, Small Causes at Chennai.

For Petitioner : Mr.PL.Narayanan

For Respondents : Mr.K.Bijaysundar
for M/s.K.Jagannadha Rao for R1

ORDER

This matter is taken up for hearing through Video-Conferencing.

This Revision has been filed against an order condoning the delay of 3185 days in seeking to set aside an *exparte* decree passed in an ejectment suit filed under Section 41 of the Presidency Small Causes Court Act.

2. The landlord sought for eviction after terminating the tenancy by an appropriate notice. The tenant claimed the benefits of Section 9 of the Tamil Nadu City Tenants Protection Act, and filed an application in MP No.207 of 1987. The said miscellaneous petition came to be allowed *exparte* some time in the year 1990 and thereafter, upon application by the landlord the *exparte* order was set aside. Eventually the application in MP No.207 of 1987 was dismissed on merits on 30.04.1998. Thereafter, an *exparte* ejectment decree came to be passed. The fifth defendant in the suit,

who was impleaded as the legal representative of the second defendant filed an application seeking to set aside the *exparte* preliminary decree along with an application to condone the delay of 3185 days in filing the application contending that he was not aware of the proceedings due to his tender age. According to him his elder brother Mr.Vijayaraghavan, who is a Bank employee undertook to defend the proceedings on his behalf. He would also claim that he came to know of the *exparte* decree only when the bailiff visited the property armed with a delivery warrant. For the aforesaid reasons the petitioner sought for condonation of delay of 3185 days.

3. The application was resisted by the respondent landlord contending that the reasons assigned are wholly insufficient. It is also stated that the petitioner was a major and he was impleaded as the fifth defendant in the suit and only after notice to him, he was said *exparte* and the *exparte* decree came to be passed in the year 2005. It is also claimed that the EP notice was also served on him. The claim made that the petitioner believed his elder brother was stoutly denied by the respondent landlord.

4. It was also brought to the notice of the Court that the petitioner's father filed an application under Section 9 of the Tamil Nadu City Tenants Protection Act, and the same came to be dismissed on 30.04.1998 by the Court. Therefore, the landlord would contend that the delay of almost 10 years cannot be condoned. The learned IVth Small Causes Judge, who considered the application, condoned the delay observing that the petitioner should be given an opportunity to defend the suit. The learned Judge referred to the judgment of the Hon'ble Supreme Court in ***Collector Land Acquisition Anantnag and another v. Mst. Katiji and others***, reported in ***AIR 1987 SC 1353***, in support of her conclusion that the Court should be liberal in condonation of delay.

5. I have heard Mr.PL.Narayanan, learned counsel appearing for the petitioner and Mr.K.Bijay Sundar, learned counsel appearing for Mr.K.Jagannadha Rao, for the first respondent.

6. No doubt the Hon'ble Supreme Court and this Court have been repeatedly pointing out that the Courts must be liberal in matters of delay

and they should not adopt a very strict or hyper technical approach in the matters of condonation of delay. But that does not mean that every application for condonation of delay should be allowed without even looking in to the reasons assigned for the delay. In the case on hand, the delay is enormous. The only reason assigned is the petitioner believed his brother who undertook to prosecute the case on his behalf also.

7. The suit was laid in the year 1987. The petitioner's father preferred an application in MP No.207 of 1987 which was pending for almost 11 years and it came to be dismissed eventually in the year 1998 ie. on 30.04.1998. Thereafter, it took 7 years for the Court to pass an exparte decree. The petitioner's father died pending suit. The petitioner, his mother and his brothers were impleaded even in the suit. That since they did not appear and defend the suit, the exparte decree came to be passed on 28.10.2005.

8. It is not the case of the petitioner that he was not served with notice either in the suit or in the subsequent proceedings for execution. While

accepting the fact that he was served with notice, the petitioner would blame his elder brother for the default. It is also seen from the records that the petitioner has not even gone into the box to depose regarding the contents of the affidavit. The averments in the affidavit were stoutly denied in the counter. The petitioner should have produced some evidence to show that he had entrusted the conduct of the suit with his elder brother and his elder brother was taking care of the proceedings.

9. In the absence of any evidence, I do not think the trial Court was right in accepting the flimsy reasons assigned for such lost delay of 3185 days. I am therefore of the opinion that the order of the Trial Court is liable to be set aside and it is accordingly set aside. The application in IA 1274 of 2016 will stand dismissed. The Civil Revision Petition is **allowed**. No costs. Consequently the connected miscellaneous petition is closed.

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jv
Index:No
Internet:Yes
Speaking order

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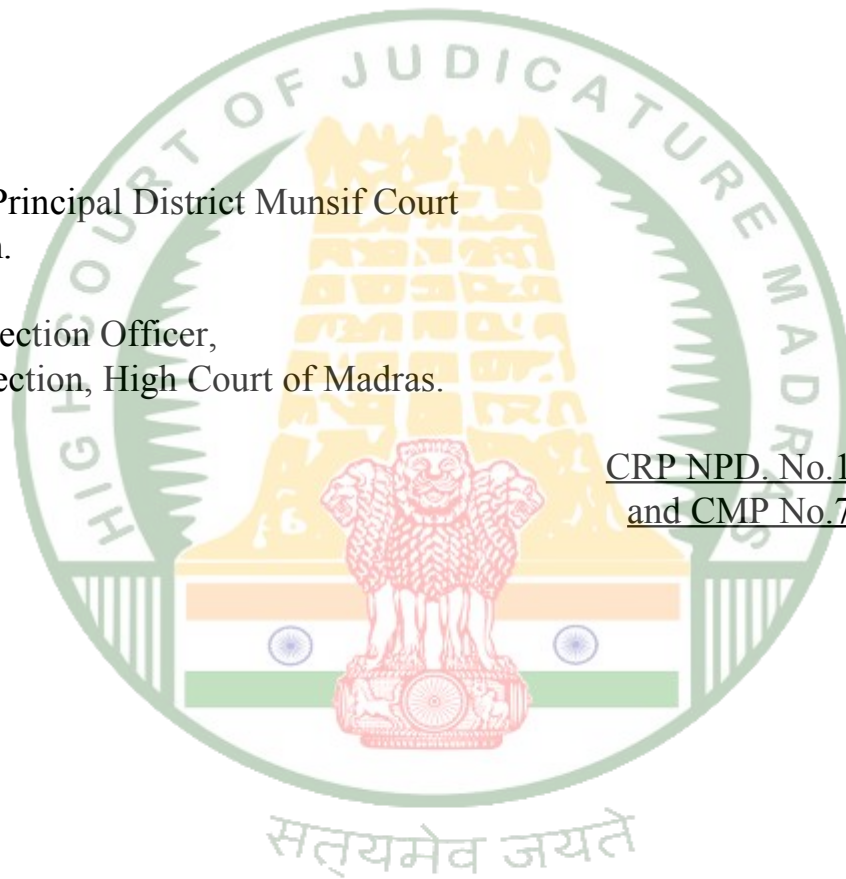
R.SUBRAMANIAN, J.

jv

To

1. The Principal District Munsif Court
Salem.
2. The Section Officer,
V.R.Section, High Court of Madras.

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