

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP PD. No.1803 of 2018
and CMP No. 10139 of 2018

V.Sureshkumar .. Petitioner

Vs.

M.Parvathi ..Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and final order passed in I.A.No.81 of 2017 in O.S.No.64 of 2013 on the file of the Principal District Judge, Tiruppur dated 23.04.2018.

For Petitioner : Mr.S.R.Sundaram
for M/s.S.Gunalan

For Respondent : Mr.N.Manokaran

ORDER

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

The defendant in OS No.64 of 2013, who suffered an *exparte* decree sought for condonation of delay of 1349 days in seeking to set aside the *exparte* decree.

2. The learned Trial Judge dismissed the application on the ground that the petitioner has come to the Court with false reason and therefore, the delay cannot be condoned. Aggrieved, the petitioner/defendant in OS No.64 of 2013 has come up with this Revision.

3. I have heard Mr.S.R.Sundaram, learned counsel appearing for M/s.S.Gunalan, for the petitioner and Mr.N.Manokaram, learned counsel appearing for the respondent.

4. The suit in OS No.64 of 2013 was laid by the plaintiff for specific performance of an agreement of sale dated 15.09.2012. According to the plaintiff, the defendant had agreed to sell the suit property to her for a

consideration of Rs.14,00,000/- and had received a sum of Rs.10,00,000/- towards advance. Since the defendant evaded performance of the contract despite the plaintiff being ready and willing to perform her part of the contract, the plaintiff was forced to seek legal remedy. The defendant who was served in the suit remained *exparte* and an *exparte* decree came to be passed by the Court on 13.08.2013.

5. Unlike the usual *exparte judgment and* decree, the learned Principal District Judge had taken pains to discuss the evidence let in and decreed the suit. The said decree was put in execution in EP No.207 of 2013 and after prolonged battle to serve the defendant/judgment debtor, the plaintiff was able to obtain an order for substituted service in the said execution proceeding and an *exparte* order was passed by the Court in the year 2016 and the Sale Deed came to be executed by the Court on 08.02.2016. Thereafter, the plaintiff/Decree holder levied EP No.14 of 2017 seeking possession.

6. It this at this juncture, the petitioner/defendant had come up with

this application seeking condonation of delay on 03.03.2017. One and the only reason assigned by the petitioner for the delay is that he was not served in the suit. In the affidavit filed in support of the application it is stated as follows:

“In the captioned suit I have not served with any pre-suit notice and I have not served with any of the suit summons or notices. Thereby I could have not appeared or engaged any counsel. Thereby I was called absent and an ex parte decree was passed against me.”

So the only explanation of the petitioner, for the delay, is that he was not served with summons in the suit. This claim was stoutly denied by the respondent and the reason assigned was categorised as absolute false hood. It was also stated that despite residing in the same address, the petitioner has evaded service of notice in EP No.207 of 2013 and he had to be served by publication. According to the respondent/decreed holder, the petitioner has come up with the instant application only to delay the execution of the decree and launch a bargain with the plaintiff.

7. The learned Trial Judge on an examination of the suit papers found that the defendant was served with suit summons and despite such service he has not appeared. The learned Judge has taken pains to compare the signature of the defendant in the affidavit filed in support of the application and the served summons in the suit records. Upon such comparison, she found that the signatures tallied and therefore, the only reason assigned by the petitioner for the delay was found to be false. Faulting the petitioner for coming to Court with false reasons, the learned District Judge dismissed the application.

8. Mr.S.R.Sundaram, learned counsel appearing for the petitioner would vehemently contend that the Court must have been liberal considering the nature of the suit and the defence that has been taken. It is settled law that the defence in the suit cannot be looked into while considering an application for setting aside an *exparte* decree or for condonation of delay in setting aside *exparte* decree. The parties are expected to come to Court with clean hands. If a litigant is found to have

filed a false affidavit, I do not think that the Court can lend a helping hand to such litigant.

9. The Hon'ble Supreme Court in ***Sciemed Overseas Inc. vs. BOC India Limited and Ors.***, reported in **2016 (1) CTC 555**, has held that filing of false affidavits before Court must be deprecated. In paragraphs 30 and 31 of the said judgment, the Hon'ble Supreme Court has pointed out that the sanctity of the affidavits filed by parties has to be preserved and protected and at the same time the filing of irresponsible statements without any regard to accuracy has to be discouraged. After referring to the judgment of the Hon'ble Supreme Court, in ***Suo Moto proceedings against R.Karuppan***, reported in **2001 (5) SCC 289**, the Hon'ble Supreme Court held that the filing of false evidence and filing of false affidavits has to be discouraged.

10. In dealing with an application for condonation of delay, the Hon'ble Supreme Court in ***Mohd. Sahid and Ors. vs. Raziya Khanam (D) thr. Lrs. and Ors.***, reported in **2019 (11) SCC 384**, had held that if incorrect

averments are made before the Court as reasons for the delay, the application for condonation of delay has to be rejected. While doing so, the Hon'ble Mrs.Justice R.Banumathi, held as follows:

“16. After referring to the order sheets dated 11.10.2011 and 18.10.2011 and the subsequent hearings in the Suit No. 591 of 1979, the First Appellate Court as well as the High Court rightly recorded concurrent findings that the Appellants had full knowledge about the proceedings of the original Suit No. 591 of 1979 and also about the vacation of stay order passed in Writ Petition(C) No. 19550 of 1985. The High Court has rightly observed that the Appellants-Defendants have not come out with the correct facts.

19. The order sheet and other materials placed on record clearly show that the Appellants had full knowledge about the proceedings of the Original Suit No. 591 of 1979 and also about the disposal of the

Writ Petition(C) No. 19550 of 1985 and the Appellants have filed application for condonation of delay with incorrect facts. Both the First Appellate Court and the High Court recorded concurrent findings that the Appellants have filed the application for condonation of delay with incorrect facts and were negligent in pursuing the matter and rightly refused to condone the delay. We do not find any perversity or infirmity in the impugned order warranting interference and the appeal is liable to be dismissed.”

11. In view of the above stated position of law and the finding of the learned Principal District Judge to the effect that the petitioner was aware of the suit and was served with summons in the suit, even in the year 2017, I do not think that the Court can lend a helping hand to him and rescue him from the muddle which he has put himself in. The learned District Judge also cannot be faulted for dismissing the application.

12. I do not find any material irregularity or illegality in the order of the Trial Court, hence the Revision Petition fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

30.11.2020

jv

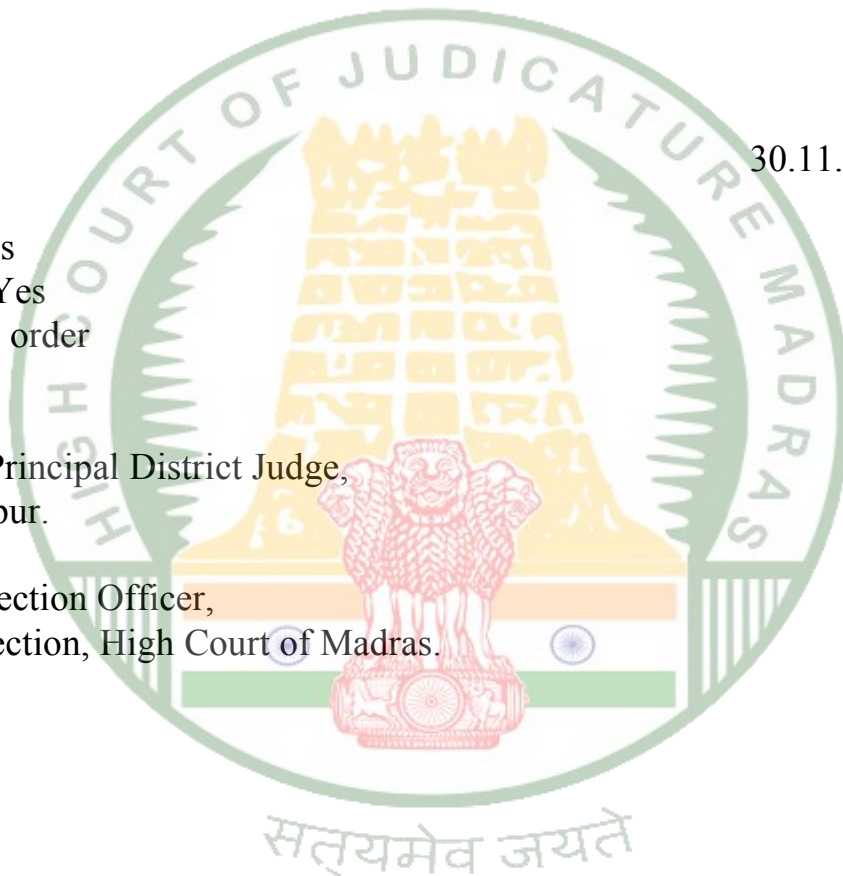
Index:Yes

Internet:Yes

Speaking order

To

1. The Principal District Judge,
Tiruppur.
2. The Section Officer,
V.R.Section, High Court of Madras.

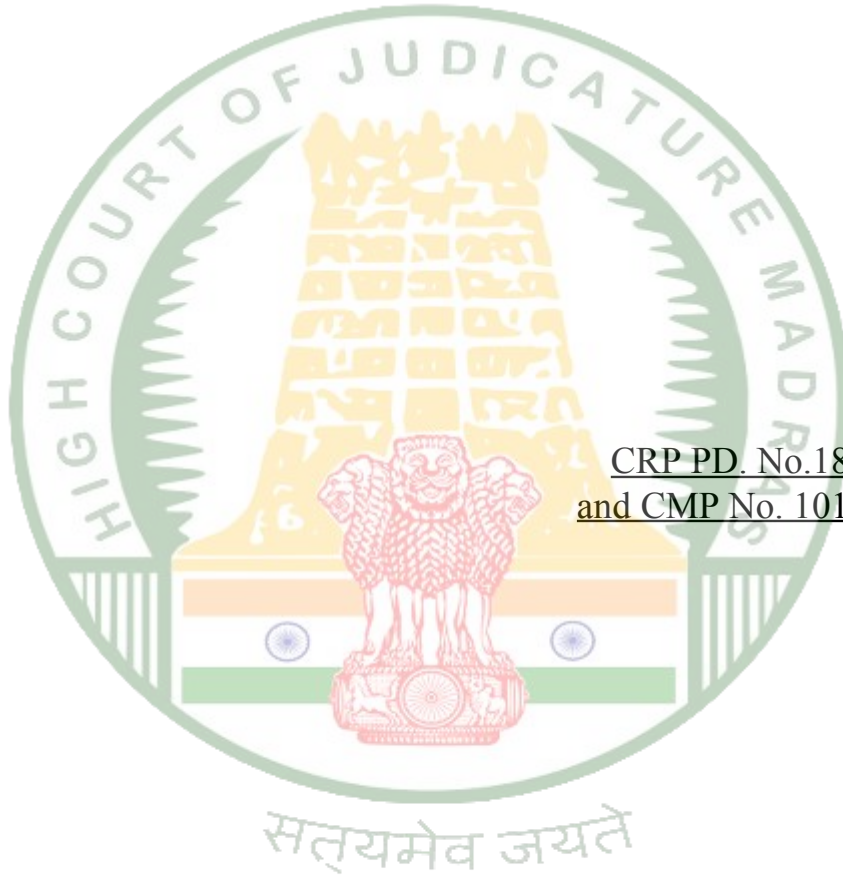


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R.SUBRAMANIAN, J.

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