

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2020

PRONOUNCED ON : 16.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(PD)No.243 and 244 of 2017

CMP.No.1047 of 2017

(Through Video Conferencing)

K.R.Mani

Petitioner in both CRPs

Vs

P.Kumar

Respondent in both CRPs

Prayer:- These Civil Revision Petitions have been filed, under Section 227 of the Constitution of India, against the fair and decreetal order, dated 05.11.2015, made in IA.Nos.128 and 129 of 2015 in IA.No.688 of 2014 in OS.No.66 of 2014 by the Subordinate Judge, Sankari.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.R.Renukadevi for Mr.N.Manokaran

ORDER

1. These Civil Revision Petitions have been filed, against the fair and decreetal order dated 05.11.2015, made in IA.Nos.128 and 129 of 2015 in IA.No.688 of 2014 in OS.No.66 of 2014, by the Subordinate Judge, Sankari.

2. The facts of the case, in a nutshell, leading to filing of this Civil Revision Petition are as follows:-

(a) The Defendant is the Petitioner herein and the Respondent is the Plaintiff. The suit was filed for recovery of money with interest. The suit

was decreed exparte on 30.06.2014. The Defendant has filed IA.No.688 of 2014 to set aside the exparte decree and the said IA was allowed on payment of cost of Rs.250/- to the Plaintiff on or before 07.01.2015. Since the cost was not paid on the due date, the IA was dismissed on 08.01.2015. The Defendant has filed IA.No.128 of 2015 on 16.02.2015 to restore the IA.No.688 of 2014 and IA.No.129 of 2015 on 16.02.2015 to extend the time by one week to pay costs. In and by the impugned order, both the IAs were dismissed. Hence, these Civil Revision Petitions have been filed.

3. This court heard the learned counsel on either side.
4. The learned counsel for the Petitioner has submitted that the application to extend the time to pay the cost was filed on the expiry of the fixed time and that when the provisions of Section 148 of CPC empowers the Court to enlarge the time, without adhering to the same, the court below erred in rejecting the applications of the Defendant and that the impugned order is a non speaking order and hence, these Civil Revision Petitions are to be allowed.
5. The learned counsel for the Respondent has submitted that the counsel on record has not filed the affidavit before the lower court and that the lower court has rightly dismissed the application and hence, these Civil Revision Petitions are to be dismissed.
6. This Court has given its anxious consideration to the submissions of the learned counsel on either side and also carefully perused the materials

placed on record.

7. The suit was decreed exparte on 30.06.2014. IA.No.688 of 2014 to set aside the exparte decree was allowed on condition. The date of said conditional order is not known. The condition to set aside the exparte order was that the cost of Rs.250/- should be paid on or before 07.01.2015. Since the cost was not paid on 07.01.2015, the Petition was dismissed on 08.01.2015.
8. The present IAs seeking extension of time to pay the cost and to restore the suit were filed on 16.02.2015 and they were dismissed on 05.11.2015. Thereafter, on 09.01.2017, the present Civil Revision Petitions have been filed.
9. On a perusal of the typed set of papers, this Court finds that the present IAs were filed after expiry of the condition i.e. after one and half month on 16.02.2015. The said delay in filing the present IAs has not been satisfactorily explained and also non payment of cost was also not properly explained.
10. Though Section 148 of CPC confers discretionary power for enlargement of time, even though the original period has expired, there must be sufficient cause for the delay and non payment of cost. Even these Civil Revision Petitions have been filed with a delay of one year. Here again also, there is no proper and satisfactorily explanation given by the Petitioner for the said delay. Hence, in the absence of sufficient and convincing reasons for not complying with the conditional order for payment of cost and the above said delay, these Civil Revision Petitions cannot be entertained and accordingly,

A.A.NAKKIRAN, J.

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they are to be dismissed.

11.In fine, these Civil Revision Petitions are dismissed. No costs.

Consequently, the connected MP is closed.

16.12.2020

Index:Yes/No

Web:Yes/No

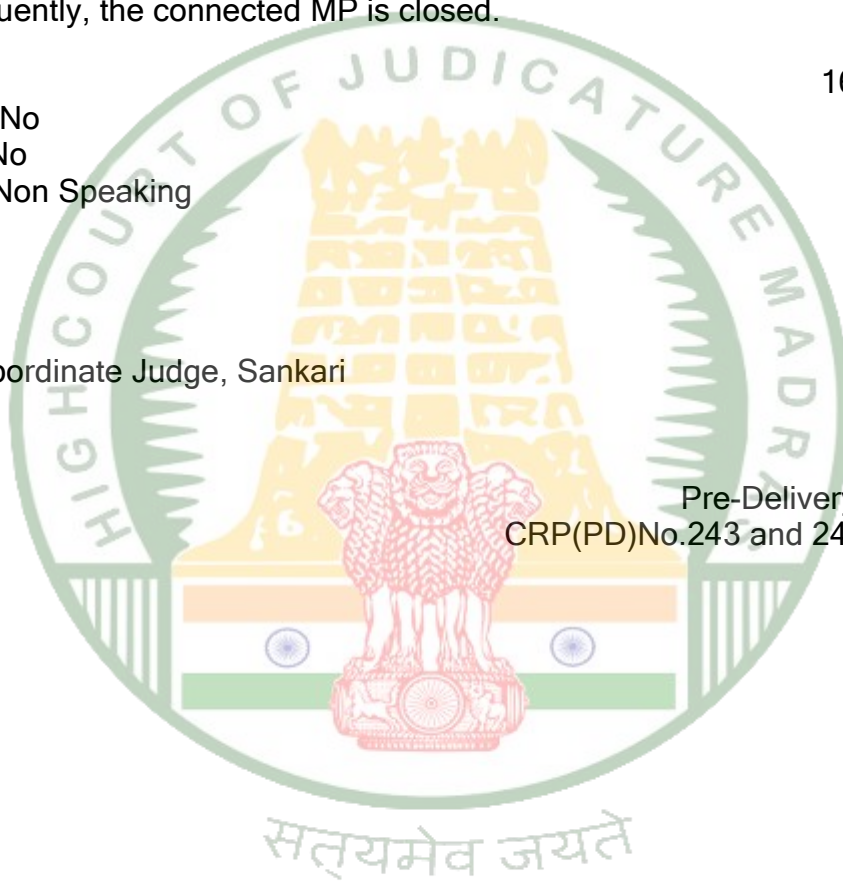
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To

1. The Subordinate Judge, Sankari

Pre-Delivery Order in
CRP(PD)No.243 and 244 of 2017



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