

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2020

PRONOUNCED ON : 17.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(NPD)No.283 of 2017

CMP.No.

(Through Video Conferencing)

1. Marimuthu
2. Muniyammal
3. Malarkodi
4. Sarasu
5. Palani

Petitioners

Vs

1. Rathinavelgounder
2. Raja

Respondents

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, to set aside the fair and decretal order dated 05.11.2016, made in IA.No.418 of 2016 in OS.No.106 of 2011, by the Subordinate Judge, Dharmapuri.

For Petitioner : Mr.M.Rajendiran

For Respondent : Mr.V.Sakkarapani

ORDER

1. This Civil Revision Petition has been filed, to set aside the fair and decretal order dated 05.11.2016, made in IA.No.418 of 2016 in OS.No.106 of 2011, by the Subordinate Judge, Dharmapuri.
2. The facts of the case, in a nutshell, are that the Plaintiffs are the Petitioners and the Respondents herein are Defendants. The suit was filed for partition

and separate possession. Since the suit was dismissed for default on 27.01.2016, the Plaintiffs have filed IA.No.418 of 2016 to condone the delay of 60 days in filing the application to restore the suit. By the impugned order, the said IA was dismissed. Hence, this Civil Revision Petition has been filed by the Plaintiffs.

3. This court heard the learned counsel on either side.
4. The learned counsel for the Petitioners has submitted that due to non communication from their counsel, they were not aware of the progress of the proceedings and that they have satisfactorily explained the delay and hence, this Civil Revision Petition is to be allowed.
5. The learned counsel for the Respondents has submitted that already the suit was dismissed for default on 24.02.2015 for their non appearance and later on the suit was restored and that again the suit was dismissed for default by order dated, 27.01.2016 for their non appearance for the second time and that only to protract the proceedings, the present IA was filed and hence, this Civil Revision Petition is 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 is of the year 2011. Earlier, the suit was dismissed for default on 24.02.2015 for non appearance of the Plaintiffs. On the application being filed by the Plaintiffs in IA.No.360 of 2015, the suit was restored. Thereafter, even though the matter was adjourned to several dates, for recording

evidence on the side of the Plaintiffs, the Plaintiffs' witness did not come to appear and to give evidence and hence, the evidence on the side of the Plaintiffs was closed. Thereafter, the matter was posted on 16.12.2015, 19.01.2016 and finally on 27.01.2016 for cross examination of the Defendants and on those dates also, the Plaintiffs did not turn up to cross examine the witnesses. Hence, again the suit was dismissed for default.

8. The present application to condone the delay in filing the petition to restore the suit was filed. The only reason assigned by the Plaintiffs is non communication from his counsel, which cannot be accepted. It is the litigant who is responsible for conducting the case.
9. The court below has held that the Plaintiffs have not given any valid or convincing reasons to condone the delay and that the reasons assigned by them cannot be accepted and accordingly, dismissed the application. Hence, this Court does not find any infirmity to set aside the impugned order and accordingly, the impugned order is to be confirmed.
10. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MP is closed.

17.12.2020

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

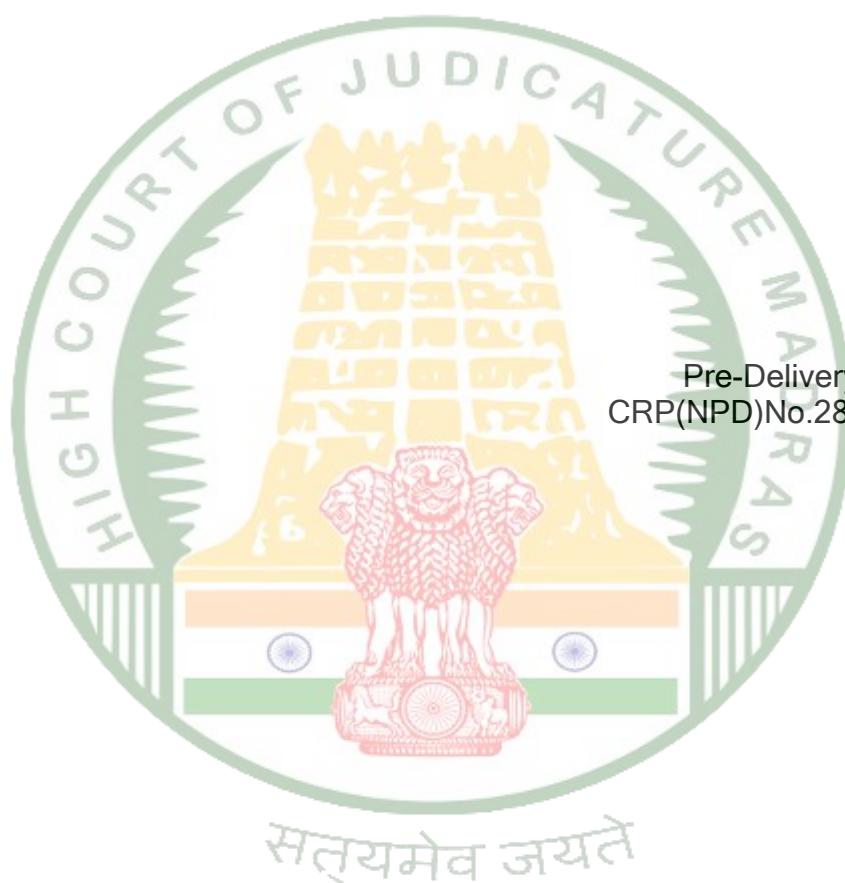
To

1. The Subordinate Judge, Dharmapuri

CRP(NPD)No.283 of 2017

A.A.NAKKIRAN, J.

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Pre-Delivery Order in
CRP(NPD)No.283 of 2017

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