

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2020

PRONOUNCED ON : 22.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(NPD)No.544 of 2017

(Through Video Conferencing)

Manikandan

Petitioner

Vs

Puthu Maramman Trust by its President
C.Shanmugasethuramasamy, Tirupur

Respondent

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, to set aside the order dated, 07.10.2016, made in IA.No.45 of 2015 in OS.No.265 of 2011, by the Subordinate Judge, Dharapuram.

For Petitioner : Mr.Arun Mozhi

For Respondent : Mr.N.Manokaran

ORDER

1. This Civil Revision Petition has been filed, to set aside the order dated, 07.10.2016, made in IA.No.45 of 2015 in OS.No.265 of 2011, by the Subordinate Judge, Dharapuram.
2. The facts of the case, in a nutshell, are that the 3rd Defendant is the Petitioner and the Plaintiff is the Respondent. The suit was filed for declaration and permanent injunction and in the suit, a written statement was filed. Issues were framed on 21.01.2014 and proof affidavit of PW.1 was filed

on 03.03.2014 and on that day, since the 3rd Defendant was absent, he was set exparte and the trial commenced with the other Defendants and a judgement and decree was passed on merits on 01.11.2014. Hence, the 3rd Defendant has filed the present application to condone the delay of 36 in filing the application to set aside the exparte decree passed against him. By the impugned order, the said application application was dismissed. Hence, this Civil Revision Petition has been filed.

3. This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
4. According to the Petitioner, since he met with an accident on 13.05.2014, he suffered grievous spinal card injuries and hence, he could not contact his counsel and he could not appear for trial, on the date of hearing and the delay is a meagre one i.e. 36 days, which is neither wanton nor wilful and the Trial Court, without considering the medical records, has refused to condone the delay, which warrants interference by this Court. Reliance is placed on **2000 3 SCC 54 (G.P.Srivastava Vs. R.K.Raizada and others)** by the Petitioner.
5. It is the stand of the Respondent that the reason adduced by the Petitioner is unbelievable to condone the delay and since a judgement and decree was already passed on merits, this Civil Revision Petition is not maintainable. Reliance is placed on **2015 1 SCC 680 (H.Dohil Construction Company Vs. Nahar Exports Limited)** by the respondent.
6. In this case, the delay is 36 days. The suit is one for declaration and

permanent injunction. The Petitioner alone is contesting the matter. Moreover, the Petitioner has filed medical records, such as discharge summary and the First Information Report, to show that he had suffered severe spinal cord injuries in the accident, which disabled the Petitioner to proceed with the trial, thus causing the delay.

7. It would be appropriate, in the interest of justice, to have the matter decided on merits, after affording opportunity to both parties and after full-fledged trial, by allowing the parties to let in evidence both oral and documentary. Accordingly, in the interest of justice and in order to give one more opportunity, the present application may be allowed on payment of cost.
8. In fine, this Civil Revision Petition is allowed. The impugned order dated, 07.10.2016, made in IA.No.45 of 2015 in OS.No.265 of 2011, by the Subordinate Judge, Dharapuram, is set aside and said IA is allowed on payment of cost of Rs.1,000/- (Rupees one thousand only) to the Taluk Level Legal Services Authority, within two weeks from the date of receipt of a copy of this order. Since the suit is of the year 2011, the Trial Court is directed to dispose of the suit, on merits and in accordance with law, within six months thereafter. No costs.

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

1. The Subordinate Judge, Dharapuram

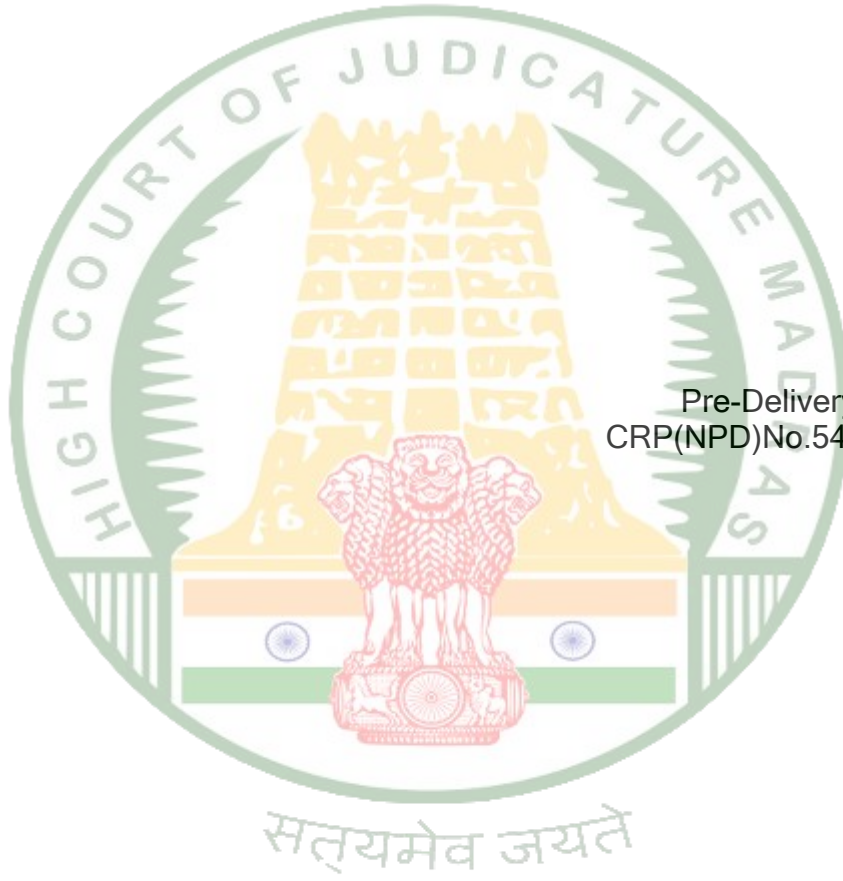
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A.A.NAKKIRAN, J.

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Pre-Delivery Order in
CRP(NPD)No.544 of 2017

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