

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.Nos.1931 and 1932 of 2004

1.V.S.Amirjan

2.Mrs.Athirijan

... Petitioners in both CRPs

Versus

1.M.K.Ram [died]

2.Mrs.R.Saraswathi

3.M.R.Yuvaraj

4.M.R.Lavaraj

5.M.R.Raviraj

... Respondents in both CRPs

[Respondents 2 to 5 brought on record as LR's of the deceased sole respondent vide Court order dated 12.10.2018 made in Cmp.Nos.9679 to 9681 of 2018 in CRP.No.1931/2004 and Cmp.Nos.9682 to 9684 of 2018 in C.R.P.No.1932/2004].

Common Prayer: Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure, against the order and decretal order dated 06.04.2004 of the Court of the Subordinate Judge, Vellore passed in I.A.Nos.618 & 619 of 2003 respectively, in O.S.No.90 of 1998 and prays that the same may be set aside.

(in both cases)

For Petitioner : Mr.S.Baskaran

For R2&R3 : Mr.S.William

For R1 : Died (steps taken)

For R4&R5 : Not ready in notice

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decretal order order dated 06.04.2004 passed in I.A.Nos.618 & 619 of 2003 respectively in O.S.No.90 of 1998 by the Subordinate Judge, Vellore, thereby, dismissing the application to condone the delay of 2166 days in filing the petition to set aside the exparte preliminary decree.

2.The petitioners are the defendants and the first respondent (since deceased) is the plaintiff. The first respondent (since deceased) filed the suit for recovery of money due on the basis of the pro-note dated 23.12.1995. The suit was filed in the year 1998. The suit summons was duly served to the petitioners herein/defendants. On receipt of summons, the petitioners engaged a counsel. Thereafter, the petitioners failed to file their written statement before the Trial Court and it passed the exparte preliminary decree on 26.02.1998. Thereafter, the first respondent (since deceased) filed an application in IA. No.60 of 2000, praying to pass a final decree, in which also the petitioners were duly served notice. On receipt of the notice, the petitioners did not engage any counsel on their behalf in the final decree application. Furthermore, they failed to file any counter in the said application and the same was decreed on 25.07.2001.

3.On the strength of the final decree, the first respondent (since deceased) filed an Execution Petition in E.P No.107 of 2017 on 10.12.2001, however, the petitioners managed to evade the service of notice in the execution petition, the matter was posted finally on 31.08.2003. The notice in the execution petition was affixed on the door of the petitioners herein. Thereafter, the petitioners have come forward with these petitions, to set aside the exparte preliminary decree and the exparte decree passed in the final decree along with the application for condonation of delay.

4.A perusal of the affidavit filed in support of the condone delay petition reveals that after receipt of summons, the petitioners engaged the counsel to contest the suit filed by the first respondent (since deceased). Therefore, they did not contact their counsel. Only after receipt of summons in the final decree proceedings application in I.A.No.60 of 2000, they came to understand about the exparte preliminary decree. Thereafter, they engaged another counsel to appear in the final decree proceedings. Unfortunately, at this juncture, the first petitioner was undergoing a medical treatment at CMC Vellore, Hospital as an in-patient due to the spinal cord problem. Thereafter, he was advised to take rest for at least six

months. In view of the same, the first petitioner could not contact his counsel and he failed to instruct his counsel to file a written statement in the suit as well as counter in the final decree petition.

5. Admittedly, no one was examined and no exhibits were marked on behalf of the petitioners to specify the reasons for the delay. Absolutely, no documents were produced to show that the first petitioner was admitted in the hospital due to spinal cord problem. Even assuming that, the first petitioner fell ill and he was admitted in the hospital, the second petitioner did not take any steps for filing written statement before the Court below. Therefore, the petitioners had willfully and wantonly allowed the Court below to set them *exparte* and pass an order against them. They wantonly failed to file the petitions in time. The petition to condone the delay was also only to drag the proceedings, as stated *supra*.

6. Since the pro-note dated 23.12.1995 and the suit is of the year 1998, and till date the first respondent (since deceased)/plaintiff could not enjoy the fruits of the decree, the Court below has rightly dismissed the petition to condone the long years of delay in filing the petition to set aside the *exparte* decree. Thus, this Court does not find any illegality or infirmity

in the order dated 06.04.2004 passed in I.A.Nos.618 & 619 of 2003 respectively, in O.S.No.90 of 1998 by the Subordinate Judge, Vellore.

7.In view of the above observations, the Civil Revision Petitions are dismissed. No costs.

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Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order

klr

To

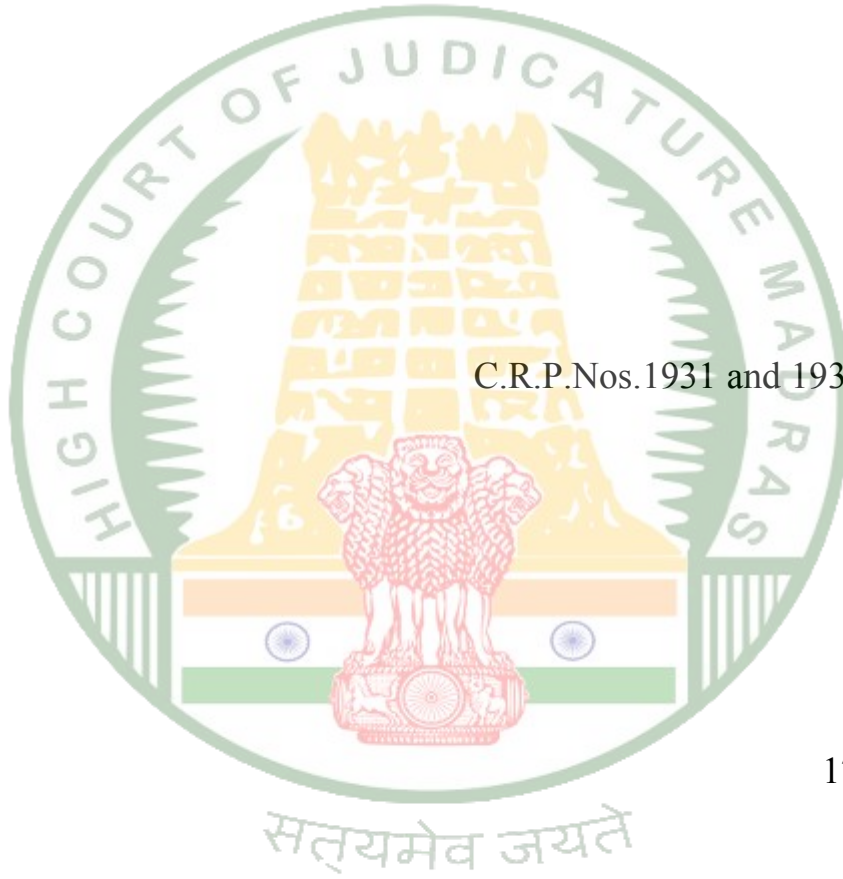
- 1.The learned Subordinate Judge, Vellore.
- 2.The Section Officer, VR Section, High Court, Madras.

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G.K.ILANTHIRAIYAN, J.

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