

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(NPD) No.251 of 2021

and

C.M.P.No.2424 of 2021

R.Nagarajan

.. Petitioner

Vs.

N.Gowri

..Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 04.10.2019 passed in I.A.No.621 of 2018 in O.S.No.14 of 2017 on the file of the V Additional District Court, Coimbatore.

For Petitioner : Mr.K.Venkatasubban

ORDER

The Civil Revision Petition has been filed by the petitioner praying to set aside the order dated 04.10.2019 passed in I.A.No.621 of 2018 in O.S.No.14 of 2017 on the file of the V Additional District Court, Coimbatore.

2. The suit in O.S.No.14 of 2017 is one for declaration and directing the defendant to deliver vacant possession and to pay damages. In the said suit, the exparte decree came to be passed on 03.11.2017. The defendant/ petitioner herein filed a petition in I.A.No.621 of 2018 to condone the delay of 332 days in filing the petition to set aside the exparte decree on the ground that the defendant was suffering from jaundice and she was taking Siddha Treatment and she was a diabetic patient, due to the said illness she was not in a position to communicate to her counsel to file the written statement. The said petition was allowed by the court below, against which the petitioner/ plaintiff has come up on this Civil Revision Petition.

3. The learned counsel for the petitioner would submit that the

court below has allowed the petition filed by the respondent/ defendant to condone the delay of 332 days in filing the petition for setting aside the exparte decree without considering the fact that the respondent deliberately evaded service of summons in the execution petition in E.P.No.19 of 2018 in the month of July and August 2018 in order to file this petition in I.A.No.621 of 2018 to condone the delay in filing the petition to set aside the exparte decree. Even when the respondent was served on 06.09.2018, a month after receiving the summons, the respondent has filed this petition only to protract the proceedings. The respondent only wants to drag on the proceedings, by not receiving the summons on time. She has also not given any valid reasons for condoning the delay in filing the set aside petition. Hence, he prays to allow this Civil Revision Petition and set aside the order passed in I.A.No.621 of 2018.

4. It is seen that the respondent was suffering from jaundice and diabetics, due to which she was not in a position to contact her counsel to file her written statement in the suit. As the written statement was not filed the respondent was set exparte and exparte decree came to be passed.

As the suit is filed for declaration and directing the defendant to deliver vacant possession and to pay damages, the defendant has every right to contest the same and she should be given fair opportunity to put forth her defence.

5. Hence, this court is of the view that there is no illegality or infirmity in the order passed by the court below by allowing the petition and condoning the delay of 332 days in filing the petition to set aside the exparte decree. It is also seen that the suit is of the year 2017, hence, this court is of the view that the trial shall be conducted and the suit shall be disposed of on an earlier date.

6. Thus, the learned V Additional District Judge, Coimbatore shall frame issues, if not framed, and proceed with the trial and complete the trial within a period of one (1) year from the date of receipt of a copy of the order.

7. Accordingly, this Civil Revision Petition is disposed of. No

costs. Consequently, the connected miscellaneous petition is closed.

17.02.2021

dsa

Index :Yes/No

Internet :Yes/No

Speaking order/ Non-Speaking order

To

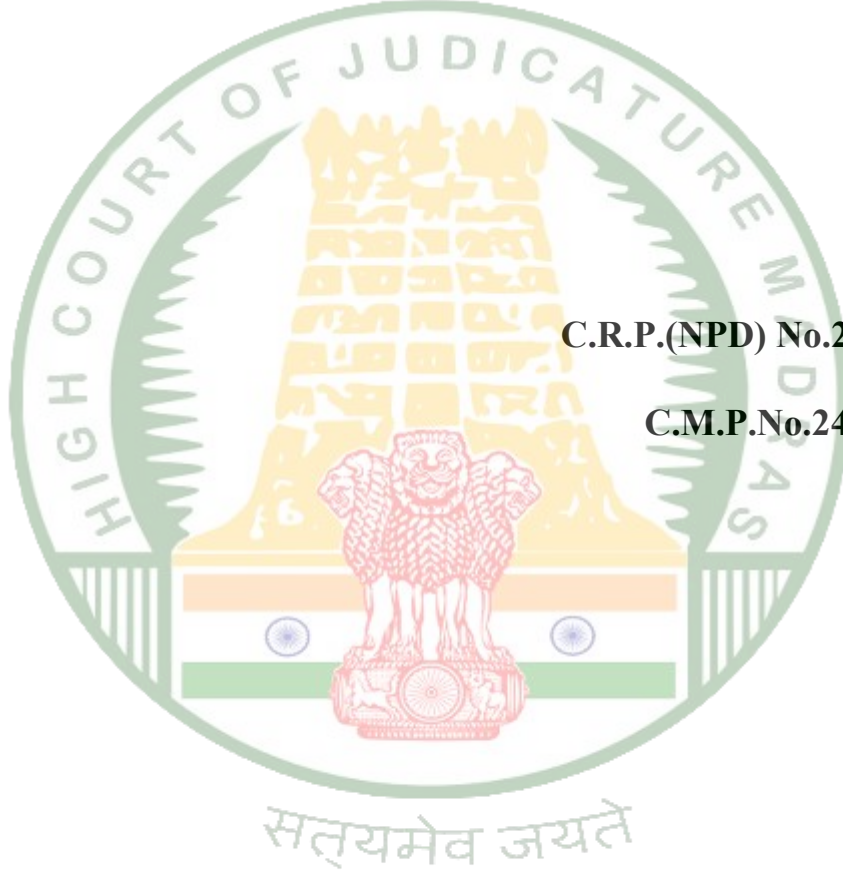
The V Additional District Judge,
Coimbatore.



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V.BHAVANI SUBBAROYAN, J.

dsa



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