

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED 16.08.2021**

**CORAM**

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM**

**CRP (NPD).No.1212 of 2018**

V.Gunasundari

...Petitioner

Vs

1. M/s. Perfect Benefit Fund Ltd.,  
Rep. by its Authorised Signatory,  
Having Office at No.10,  
Soorammal Street, Chennai 600 008.
2. Vamana Auctioneers,  
Rep. by its Manager,  
R.No.137, First Floor,  
No.17, O.S.Building, E.K.Guru Street, Periamet,  
Chennai 600 003.
3. T.Nagarajan
4. S.Raja

..Respondents

**Prayer:-** Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order made in CMP.No.621 of 2017 in A.S.No.237 of 2013, dated 20.11.2017 passed by the VI Additional Judge, City Civil Court, Chennai in dismissing the said miscellaneous petition.

For Petitioner : Mr.J.Kannan

For Respondents

for R1 to R3 : No Appearance

for R4 : Mr.Aravindan

for M/s.Arulselvam Associates

**ORDER**

This Civil Revision Petition is directed against the order of the VI Additional Judge, City Civil Court, Chennai, in CMP.No.621 of 2017 in A.S.No.237 of 2013, dated 20.11.2017, wherein the petition for restoration of the appeal was rejected.

2. The brief facts of the case are that the petitioner is the plaintiff in O.S.No.2028 of 2018 on the file of the VII Assistant Judge, City Civil Court, Chennai. The suit was filed for declaration that the auction conducted on 07.03.2008 by the second defendant is null and void and for consequential permanent injunction. After contest, the suit was dismissed on 28.02.2011. Aggrieved over the judgment and decree, the appeal A.S.No.237 of 2013 was filed, however it came to be dismissed for default on 18.04.2017. The present petition was filed to restore the appeal. The learned appellate judge dismissed the said petition. Challenging the same, the present revision has been filed.

3. Mr.J.Kannan, learned counsel appearing for the petitioner would state that the petitioner is the owner of the property and the

defendants sold the property in the auction held on 07.03.2008 without following the procedure. When the right of the petitioner in the immovable property is involved, she should be given opportunity to pursue the appeal. He further added that the suit property is worth about Rs.50 Lakhs, but it was sold for a meagre sum.

4. Per contra, Mr.Aravindan, learned counsel appearing for the respondent would argue that the suit was rightly dismissed by the Trial Court. However to prolong the litigation, the present petition has been filed. He further contended that in the year 2014 itself, the appeal was ready for arguments, but the petitioner allowed the appeal to be dismissed for default and thereafter, the appeal was restored in the year 2017. Though sufficient opportunity was provided to the petitioner, she has not utilized, hence, she is not entitled for restoration of the appeal.

5. Heard the learned counsels appearing on either side and perused the materials available on record.

6. In the present case, the petitioner has filed the suit for

declaration and for consequential injunction. It is not in dispute that the petitioner was a mortgagor and the property was mortgaged in favour of the first defendant while availing loan. Due to default in payment of the loan amount, the property was brought for auction and it was held on 07.03.2008. Challenging the conduct of the auction held on 07.03.2008, the petitioner filed the suit. It is brought to the notice that the petitioner has filed another suit OS.No.3667 of 2009 challenging the sale deed executed in favour of the auction purchaser and the same is pending in part heard stage.

7. From perusal of records, it is seen that the appeal suit was filed in the year 2013 and the same was dismissed for default first time on 13.11.2014. Thereafter, on an application filed by the petitioner it was restored and posted for arguments on 24.03.2017, 03.04.2017 and 18.04.2017. Admittedly, the learned counsel appearing for the petitioner was absent in the above three hearings, hence the appeal was dismissed for non prosecution on 18.04.2017. The conduct of the petitioner shows that she was not diligent in pursuing the appeal. However, in the interest of justice, the petitioner is to be given one more opportunity to argue the

appeal. The inconvenience caused to the respondents cannot be lost sight. In such circumstances, the appeal shall be restored on payment of Rs.25,000/- (Rupees twenty five thousand only) to the respondents within a period of four weeks. On such compliance, the appeal A.S.No.237 of 2013 shall be restored and disposed of on merits and in accordance with law within a period of eight weeks therefrom.

8. With the above directions, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

**16.08.2021**

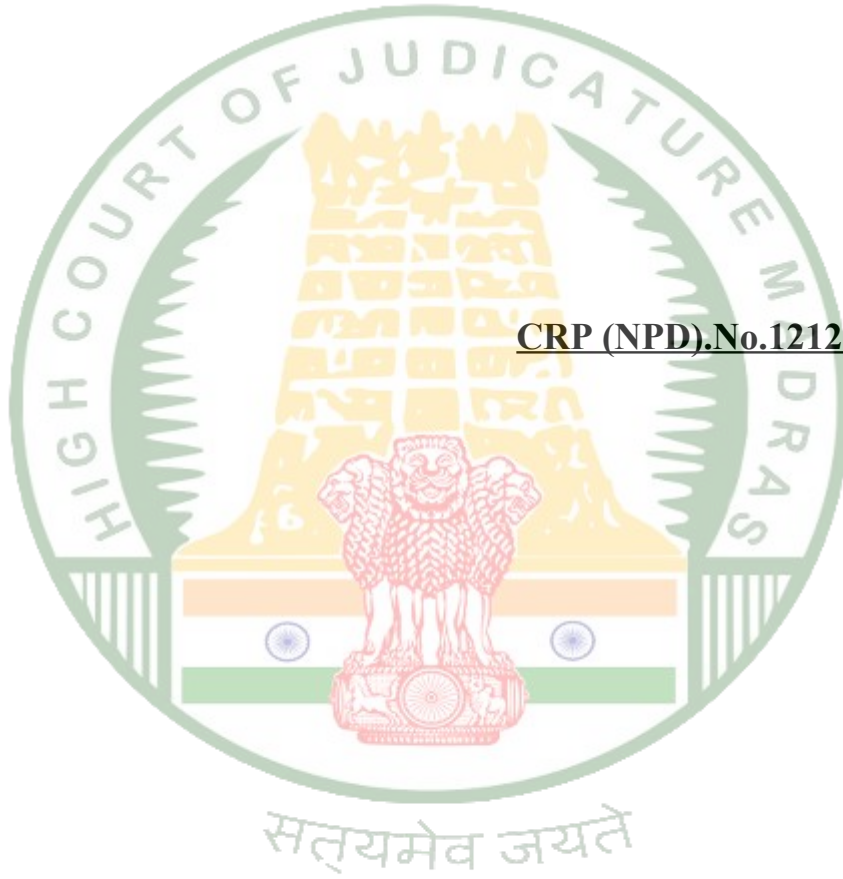
Index : Yes/No  
Internet : Yes/No  
Speaking Order  
pvs

To  
1. The VI Additional Judge,  
City Civil Court, Chennai.  
  
2. The Section Officer,  
V.R.Section, High Court, Madras.

WEB COPY

**K.KALYANASUNDARAM.J.**

pvs



**CRP (NPD).No.1212 of 2018**

WEB COPY

**16.08.2021**