

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.2993 of 2015

and

MP.No.1 of 2015

R.Subramani

..Petitioner

Vs.

Sri Thiruvotteswarar Free High School Trust,
Rep by its Trustee,
No.1, EVK Sampath Salai,
Vepery, Chennai-600 112

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC against the fair and decretal order dated 06.02.2015 passed in I.A.No.6056 of 2014 in OS.No.8479 of 2011 on the file of the II Assistant City Civil Court, Chennai declining to condone the delay of 511 days in filing an application seeking to set aside an exparte order passed by the Hon'ble II Assistant City Civil Court.

For Petitioner : Mr.D.Senthil Kumaar

For Respondent : Mr.G.Sugumaran

ORDER

This civil revision petition is filed against the fair and decretal order dated 06.02.2015 passed in I.A.No.6056 of 2014 in OS.No.8479 of 2011 on the file of the II Assistant City Civil Court, Chennai thereby dismissing the petition to condone the delay of 511 days in filing the petition to set aside the exparte decree.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed suit for recovery of possession in respect of the suit property. After receipt of summon, the petitioner failed to appear before the court below as such he was set exparte and exparte decree was passed by the judgment and decree dated 11.07.2012. On the strength of the decree, the respondent filed execution petition for delivery of possession in EP.No.4622 of 2012. In the EP also notice was served on the petitioner and he failed to appear before the execution court. In the execution court, he was also set exparte on 16.09.2013. Delivery was ordered in respect of the suit property. When the bailiff went to the suit property, the petitioner quarrelled with him and filed petition to set aside the exparte decree in the month of November 2013 with the delay of 511 days. Simultaneously, he also filed petition to set aside the exparte order passed by the execution court in EA.No.4512 of 2013 and the same was

dismissed on 27.07.2014. Aggrieved by the same, the petitioner filed CMA No.109 of 2014 and the same was also dismissed by order dated 05.03.2015.

3. In fact, while admitting the CMA, the petitioner was directed to deposit arrears of rent of Rs.15,000/- and thereafter he failed to pay any rent. Admittedly, the suit property was rented out to the petitioner herein for the monthly rent of Rs.2,000/-. As on today, he is in arrears of Rs.3,70,000/-. In the execution petition, the respondent filed petition for seeking police aid and break open the door. Both the petitions were allowed and yet to execute the same. On perusal of the affidavit filed in support of the condone delay petition revealed that the petitioner was not served any suit summon and also no notice was served in the execution petition. Only when the bailiff came to the suit property, the petitioner came to understand that the exparte decree was passed as against him. It is seen that the petitioner was duly sent notice and summon in the suit as well as the execution proceedings and both were returned as unclaimed. Therefore, the court ordered paper publication and after effecting paper publication exparte decree was passed. The suit property is the commercial premises and the petitioner is doing business in the suit property.

4. Therefore, the petitioner wantonly and wilfully unclaimed the notice and summons and as such he had knowledge about the suit and he himself made him exparte in the suit. That apart, even till today, the petitioner did not pay any rent for the petition premises and he is in arrears of more than Rs.3,70,000/- for the suit property. Further, the reasons stated by the petitioner are not sufficient to condone the delay of 511 days. Therefore, the court below rightly dismissed the petition to condone the delay in filing the petition to set aside the exparte order as such this Court finds no irregularity or infirmity in the order passed by the court below.

5. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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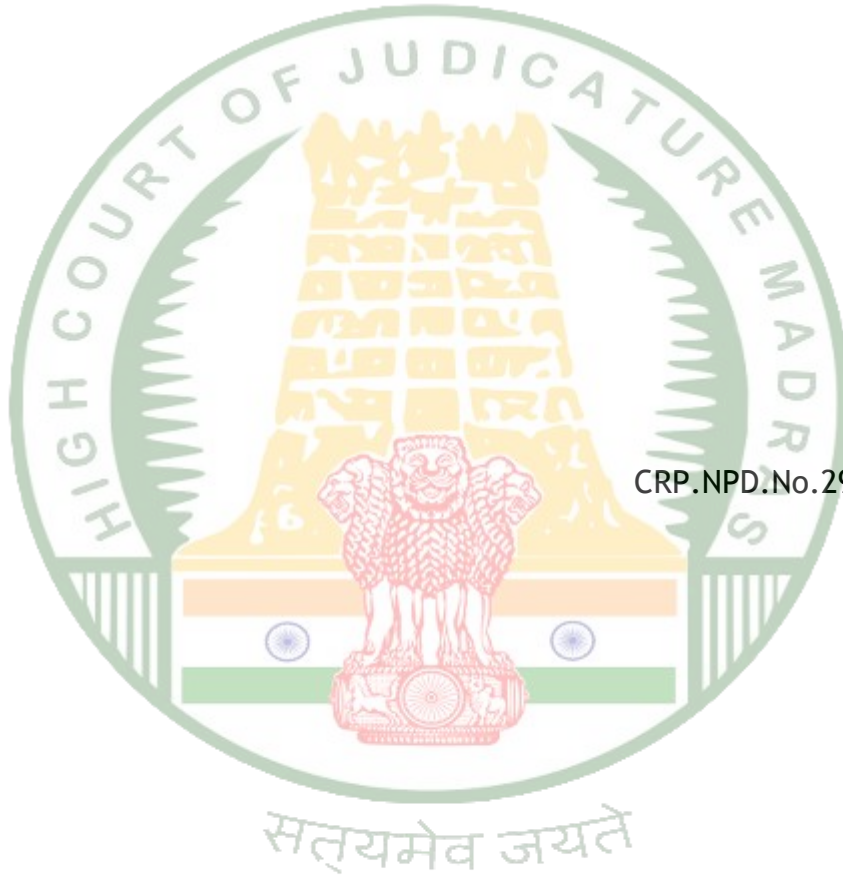
The II Assistant Judge,
City Civil Court, Chennai



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G.K.ILANTHIRAIYAN,J.

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