

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.3734 of 2015
and M.P.No.1 of 2015

1.C.Sugumaran

2.R.Mani

3.H.Ramani Bai

... Petitioners/Defendants

Vs.

M/s. Housing and Urban Development
Corporation Ltd. (HUDCO),
Rep. by its Authorized Person and Manager,
Mr.D.Rajendran
5th Floor, C.M.D.A. Tower I
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600008.

... Respondent/Plaintiff

Prayer: The Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 17.06.2015 passed in I.A.No.226/2014 in O.S.No.195 of 2012 on the file of the Subordinate Court, Arakkonam.

For Petitioners : Mr.R.Ramesh

For Respondent : Ms.P.V.Rajeswari
for Mr.V.N.Amudhan

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed challenging the Order dated 17.06.2015 passed by the learned Subordinate Court, Arakkonam in I.A.No.226 of 2014 in O.S.No.195 of 2012, wherein, the petition to condone the delay of 367 days in filing the petition to set aside the *exparte* decree was dismissed.

2. The petitioners were the defendants against whom the respondent/plaintiff has filed a suit for recovery of money based on a mortgage. Due to non-appearance of the petitioners, an *exparte* decree has been passed. The petitioners have filed a petition to set aside the *exparte* decree along with a petition to condone the delay of 367 days. The learned trial Court has dismissed the petition by not accepting the reasons stated by the petitioners for condoning the delay of 367 days.

3. During the course of this proceeding, it was submitted by the learned counsel for the petitioners that if an opportunity is given, the parties can work out some possibilities for any settlement.

4. The learned counsel for the respondent submitted that if the petitioners could give any written proposal for settlement that alone would show their genuine intention of settling the issue.

5. Earlier on a conditional Order of this Court dated 23.09.2015, the petitioners deposited a sum of Rs.1,00,000/- and that is now lying in the account of the Subordinate Court, Arakkonam.

6. It is submitted by the learned counsel for the petitioners that the amount so deposited before the trial Court can be allowed to be withdrawn by the respondent as a positive gesture towards settlement. However, it is submitted that an opportunity may be given to the petitioners by allowing the Civil Revision Petition.

7. Taking into consideration of the submission and in order to enable the parties to work out settlement possibilities if any, I feel that the Order of the trial Judge in dismissing the petition to condone the delay of 367 days in filing the petition to set aside the *exparte* decree should be set aside. In that case, the petitioners can get an opportunity to set aside the decree and to revive the suit. However, there may be a second thought in the mind of the petitioners to drag the

proceedings when such an occasion arises. Under such circumstances, I feel that the following conditional Order should be passed.

8. In the result, this Civil Revision Petition is allowed and the Order of the Subordinate Judge, Arakkonam, dated 17.06.2015 passed in I.A.No.226/2014 in O.S.No.195 of 2012 is set aside on the condition that in case, the suit is restored by way of passing a favourable Order for setting aside the *exparte* decree, the petitioners should co-operate for the early settlement or for early disposal of the suit. In the event of the petition to set aside the *exparte* decree is allowed and the suit is taken up for trial, the learned trial Judge is directed to post the case on day to day basis and conclude the trial at the earliest. The respondent is given with a liberty to withdraw the amount of Rs.1,00,000/- deposited by the petitioners in Subordinate Court, Arakkonam on the earlier conditional Order of the Court and credit the same in the loan account of the petitioners. The respondent can file a petition in this regard and get an appropriate Order for the same. No costs. Connected miscellaneous petition is closed.

01.07.2021

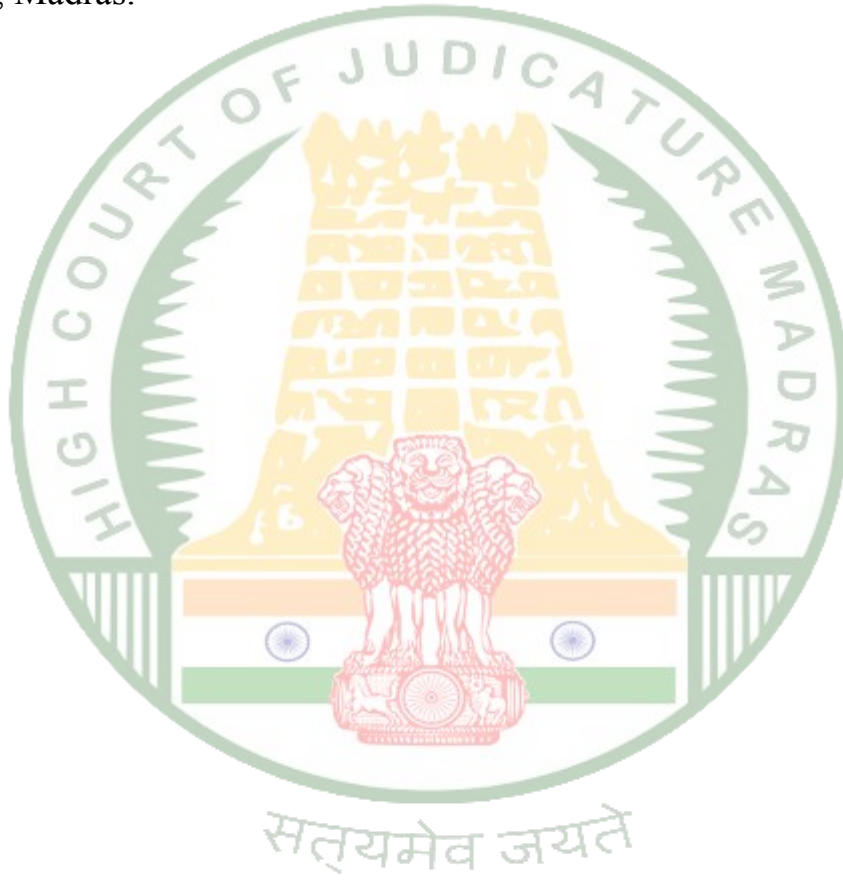
Speaking/Non-speaking
Index: Yes/No

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To

1.Subordinate Court,
Arakkonam.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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R.N.MANJULA,J.

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