

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(N.P.D).No.3991 of 2015
and M.P.No.1 of 2015

1.Suriya Begum
2.Mohammed Shaffi
3.Mohammed Sherif

...Petitioners

Vs

1.S.Jothinathan
2.S.Amalnathan

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 12.08.2015 in I.A.No.437 of 2010 in O.S.No.344 of 2010 on the file of the I Additional Sub Court, Salem.

For Petitioners : Mr.R.Subramanian

For Respondents : No appearance for R1
Mr.S.Parthasarathy,
Senior Counsel for
Mr.P.Dinesh Kumar for R2

ORDER

This Petition has been filed as against the fair and decretal order dated 12.08.2015 in I.A.No.437 of 2010 in O.S.No.344 of 2010 on the file of the I Additional Sub Court, Salem, thereby dismissing the petition to condone the delay of 894 days in filing the petition to set aside the exparte decree.

2.Originally the suit was filed in O.S.No.632 of 1997 before the 1st Additional Sub Court, Salem. Later it was transferred to the file of Fast Track Court No.II, Salem and re-numbered as O.S.No.65 of 2003. In the suit, the husband and father of the 1st petitioner herein is the 3rd defendant. He engaged a counsel namely one Mr.K.Dakshinamoorthy, who appeared on behalf of the 3rd defendant as well as for 4th and 5th defendant in the suit. Thereafter the 3rd defendant was not aware of the fact that the suit was transferred to the file of the Fast Tract Court No.II, Salem. Only on receipt of notice in the final decree application in I.A.No.812 of 2006, he came to know that the suit was decreed against him. Immediately he filed a petition to set aside the exparte decree dated 14.10.2003, with the petition to condone the delay of 894 days. The said petition was dismissed by an order

dated 12.08.2015 in I.A.No.437 of 2010 in O.S.No.344 of 2010. Aggrieved by the same, the present Civil Revision Petition is preferred.

3.The learned counsel for the petitioners submitted his case on two folds. First of all, the Judgment passed by the trial Court itself is not a Judgment in the eye of law. (ii) the petitioner's husband was suffered from cardiac problem since 2002 and he was taking treatment in the hospital. Though the 1st petitioner was examined as P.W.2 and marked Exs.P.14 to P.22, in respect of the treatment taken by her husband, the Court below failed to consider the same and dismissed the petition. He further submitted that in fact husband of the 1st petitioner was examined in chief as P.W.1, but unfortunately when the matter was posted for cross examination, he died due to his heart ailments. When this Court as well as the Hon'ble Supreme Court of India repeatedly held that the Court should adopt liberal approach while considering the condone delay petition, the Court below without considering the above aspects, mechanically dismissed the petition to condone the delay of 894 days.

4.He further submitted that the suit filed by the respondents for partition, declaration and injunction, directing the division of suit A schedule

property into two equal shares and allot one such share to the petitioners herein and allot one such share to the respondents separately for their reliefs and to declare that the suit property, ie., 1st item of the B schedule was sold out vide the sale deed dated 19.11.1992, executed by the 1st and 2nd defendant in favour of the 3rd defendant, as null and void and for some other reliefs.

5. In so far as the other prayers are concerned the 3rd defendant do not have any grievance over the prayer. Further it is submitted that likewise the 4th and 5th defendants also purchased the 2nd item of the B schedule property from the very same defendants 1 and 2 herein.

6. When, it is being so, the trial Court dismissed the suit as against the 4th and 5th defendants and decreed the suit in so far as the 3rd defendant in respect of the 1st item of the B schedule property. Further he submitted that on perusal of the Judgment passed in O.S.No.65 of 2003 dated 14.10.2003, is not a Judgment in the eye of law, for the reason that it is not in terms of Section 2 (9) of Civil Procedure Code. In support of his contention he relied upon the following Judgments:-

(i) in the case of *N.Balakrishnan Vs. M.Krishnamurthy* reported

in (1998) 7 SCC 123.

(ii) in the case of *M.K.Prasad Vs. P.Arumugam* reported in (2001) 6 SCC 176.

(iii) in the case of *Meenakshisundaram Textiles Vs. Valliammal Textiles Ltd.*, reported in 2011 (3) CTC 168.

(iv) in the case of *Ummer Vs. Pottengal Subida and Others* reported in (2018) 15 SCC 127.

(v) in the case of *A.J.Chandrasekar Vs. N.Masilamani and others* in C.R.P.(PD).No.2506 of 2011 dated 29.10.2018.

7.Per contra, the learned Senior Counsel appearing for the 2nd respondent would submit that the respondents filed a suit for partition and declaration, in which the 1st petitioner's husband is the 3rd defendant. Though he engaged a counsel, he did not file any written statement in the suit. For administrative purpose, the suit was transferred from the file of the 1st Additional Sub Court, Salem to the file of the Fast Track Court No.II, Salem, and renumbered as O.S.No.65 of 2003. For transferring the case, this Court issued circular in the year 1981 and accordingly the counsels who appeared on behalf of either party have to make an endorsement in the

bundle that the counsel who had appeared on behalf of the petitioners has note down the fact that the suit is transferred to other Court. Therefore, the 1st Additional Sub Court, Salem, followed the circular issued by this Court and transferred the same to the file of the Fast Track Court No.II, Salem. He further submitted that the 3rd defendant had absolute knowledge about the transfer of the suit from the file of the 1st Additional Sub Court, Salem, to the file of the Fast Track Court No.II, Salem. Though the 3rd defendant engaged counsel before the 1st Additional Sub Court, Salem, he did not choose to file any written statement. It shows that he wantonly did not file any written statement to get the suit an exparte order. Further, the 3rd defendant stated the reason that he suffered with heart ailments, the documents produced by him did not correlate with the disease as stated by the 3rd defendant in the affidavit filed in support of condone delay petition. Therefore, the 3rd defendant was rightly set as exparte and exparte decree was passed on 14.10.2003. When the respondents filed a petition for final decree proceedings in I.A.No.82 of 2006, notice was ordered. On receipt of the said notice only, the 3rd defendant come forward with the petition to set aside the exparte decree, that too with the delay of 894 days. On perusal of

the affidavit filed in support of condone delay, no sufficient cause has been stated for the delay of each and every day. Therefore, the Court below rightly dismissed the petition to condone the delay of 894 days. In support of his contention he relied upon the Judgment in the case of ***Sankaralingam and another Vs. V.Rahuraman*** reported in **2002 (3) CTC 13**. Relevant paragraph is extracted hereunder:-

16.The suit was originally instituted in the Sub Court Salem and numbered as O.S.No.926 of 1994. A separate Sub Court at Attur was constituted and all suits, which came in the jurisdiction of that Court were transferred to the Sub Court, Attur and in that way, the present suit was also transferred to the Sub Court, Attur and renumbered as O.S.No.366 of 1997. It has to be noted, it is not the case of the petitioners that their counsel at Salem was not informed about the transfer of the suit to the file of Sub Court, Attur. In fact, in the affidavit filed in support of the petition they have stated that they met their counsel at Salem and he informed that he (counsel) was not able to attend the Sub Court, Attur on all the hearing dates and on the particular date i.e., on 06.04.1999, he (counsel) did not attend the Sub Court at Attur and hence was not aware about the passing of the exparte decree.

Once petitioners had engaged a counsel and who filed a vakalat, any notice given by the Court or by the other party to that counsel would constitute sufficient and proper notice to the petitioners. That being so, when the petitioners' counsel at Salem was informed about the transfer of the suit and in fact the said counsel also attended some hearing dates at Sub Court, Attur, petitioners cannot be heard to say that the transferee Court also should have issued notice about the transfer of the suit to them. In fact this Court (High Court) had way back in the year 1981, issued instructions to the Subordinate Courts for their guidance. The relevant portion of the said Circular reads as under,

"(i)When suits, appeals or other proceedings are transferred from one court to another court, the transferor court shall post before it, the cases to a particular date and take endorsements of the Advocates, who have already entered appearance for the parties that they are aware of the suits, appeals or other proceedings being transferred to a particular court and only thereafter forward the papers to the transferee court.

(ii)In cases where parties have not already been served, notice or fresh notice (as the case may be) shall be

issued by the transferee court."

Inasmuch as in the present case the transferor Court has followed the instruction (i) referred supra, there is no substance in the contention of the learned counsel for the petitioners.

8. Heard the learned counsel for the petitioners and the learned counsel for the 2nd respondent and also perused the materials available on record.

9. The father of the respondents herein filed the suit for partition and declaration in respect of the suit property as against the defendants 1 to 5. According to the plaintiff, the suit schedule property belong to their father and the 1st defendant by way of family arrangement. Thereby they were in possession and enjoyment of the property jointly without any division by meats and bound. While, the 1st defendant was admitted into the hospital for his ailments the 1st defendant along with his son viz., the 2nd defendant executed sale deed in respect of the 1st item of B schedule property in favour of the 3rd defendant by the sale deed dated 19.11.1992. Likewise in respect of the 2nd item of the B schedule property, the 1st and 2nd defendants executed sale deed dated 14.06.1993 in favour of the 4th and 5th

defendants. Therefore, the plaintiff sought for partition in respect of the suit property and also for declaration declaring that the sale deed executed in favour of the defendants 3 to 5 as null and void. The defendants 3 to 5 engaged a counsel, viz., Mr.K.Dakshinamoorthy, and he entered appearance before the trial Court.

10.Originally the suit was filed before the 1st Additional Court, Salem. Subsequently on administrative reason, the said suit was transferred from the file of the 1st Additional Court, Salem to the Fast Track Court No.II, Salem and re-numbered as O.S.No.65 of 2003 and thereafter, the 3rd defendant was set as an exparte to the suit. While pending the suit, memo was filed on behalf of the 4th and 5th defendants and recording the said memo, the suit was dismissed as against them. In respect of the 1st defendant he was called absent and he did not choose to file any written statement and as such he was set exparte.

11.On perusal of the Judgment, the trial Court passed the same as follows:-

"D1 called absent, set exparte. Memo filed and recorded as suit against D4, D5 may be dismissed. Hence suit against D4, D5 dismissed.

Suit against D1, D3 decreed as prayed for with cost. Preliminary decree passed."

12. When the plaintiff filed a petition for final decree proceeding in I.A.No.82 of 2006 in O.S.No.65 of 2003, in which notice was ordered and on receipt of the same, the 3rd defendant came to know about the exparte decree and it has been passed against him. Immediately he filed a petition to set the exparte decree passed against him with a petition to condone delay of 894 days. The points for consideration is in two folds,

(i) Whether the Judgment dated 14.10.2003 is a Judgment in terms of Section 2(9) of CPC and whether it contain the ingredients as contemplated under Order 20 Rule 4(2) of CPC ?

(ii) Whether the Court below is right in dismissing the condone delay petition ?

13. In the petition filed to set aside the exparte decree with 894 days delay, the petitioners were examined as P.W's.1 and 2, and they marked medical reports as Exs.P.1 to P.4. While pending the application to condone the delay in setting aside the exparte decree, the 3rd defendant died. Thereafter the petitioners were impleaded as legal heirs of the deceased 3rd

defendant. In fact, the 3rd defendant was examined in chief and while pending for cross examination he died. Therefore, the Court below eschewed the evidence of P.W.1 and examined his wife as P.W.2, the 1st petitioner herein. She also marked exhibits as Exs.P.1 to P.22. The learned counsel for the petitioners relied upon the Judgment in the case of **Meenakshisundaram Textiles Vs. Valliammal Textiles Ltd.**, reported in **2011 (3) CTC 168**, relevant paragraphs are extracted hereunder:-

"5. We have heard the respective learned Counsel on either side on the above question. Section 2(9) of the Code of Civil Procedure defines a "judgment" as meaning, the statement given by the judge on the grounds of a decree or order. In this context, Order 20, Rules 4(1) & (2) are also referable, which read as under:

"4. Judgment of Small Cause Courts.--(1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon. (2) Judgments of other Courts. — Judgments of other Courts shall contain a concise statement of the case, the points for determination,

the decision thereon, and the reasons for such decision."

Order 20, Rule 4(1) relates to the judgment of a Court of Small Causes. Inasmuch as the said judgment does not require more than the points for determination and that the decision thereon, a judgment of a Court of Small Causes shall not fall under Section 2(9) of the Code of Civil Procedure. Insofar as the judgment of other Court is concerned, in terms of Order 20, Rule 4(2), it shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision and therefore it shall fall under Section 2(9) of the Code of Civil Procedure and in that sense, all the ingredients contained Order 20, Rule 4(2) must be available in that judgment. This more so in view of the provisions of Order 20, Rule 5 relating to the duty of the Court to state its reasons on each issue. That Rule reads as under:

"5. Court to state its decision on each issue.--In Suits in which issues have been framed, the Court shall

state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the Suit."

6. In terms of the above provisions, every judgment should contain a concise statement of the case, the points for determination, decision thereon and the reasons for such decision. A judgment which does not contain the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to be called as "judgment". The judgment should contain the brief summary of the facts, the evidence produced by the Plaintiff in support of his claim and the reasoning of the learned Judge either for decreeing the Suit or its dismissal. The Civil Procedure Code does not say that the Court is bound to grant a decree in case the Defendant is absent. Judgment means cognitive process of reading a decision or drawing conclusion. Judgment is the basic requirement for a Court and it means a decision or conclusion reached after consideration and delibera-

tion. To put it differently, the basics of a judgment are to support by most cogent reasons that suggest themselves the final conclusion at which the Judge has conscientiously arrived.

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21. From the above discussions, it is manifestly clear that even a judgment rendered ex parte and a decree is drawn on the basis of that judgment, it is appealable. In case that judgment and decree become final without there being any Appeal, the decree is executable. In that sense, there is no difference between a judgment and decree and an ex parte judgment and decree. In view of the above, in the event the Defendant is set ex parte, the Court should be extra careful in such case and it should consider the pleadings and evidence and arrive at a finding as to whether the Plaintiff has made out a case for a decree. In this context, it may also be mentioned that though a detailed judgment is required in a contested matter, an ex parte judgment should show the application of the minimum requirement of consideration of the pleadings, issues, evidence and

the relief sought for rendering such judgment."

He also relied upon the Judgment passed in C.R.P.No.2506 of 2011 dated 29.10.2018 and this Court has held as follows:-

11. A mere perusal of the judgment passed in O.S.No.4752 of 2003 would clearly show that the judgment is not on the lines of provisions of Order XX Rule 5 of C.P.C. No issues have been framed by the learned Judge and nor has he rendered a finding on such issues. Order XX Rule 5 of the C.P.C. reads as follows:

"5. Court to state its decision on each issue
– In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit."

12. Therefore, a reading of this order makes it ample clear that a judgment should contain the issues relevant for the disposal of the suit and reasoning and finding of the Presiding Officer on the issues, in and by which he arrives at the conclusion

*should also be found. The judgment pronounced by the learned Judge in O.S.No.4752 of 2003 totally lacks these ingredients. This Court in its judgment in **M/s.Meenakshisundaram Textiles Vs. M/s.Valliammal Textiles Ltd.**, reported in (2011) 3 CTC 168, (2011) 3 LW 80 relying upon the earlier judgments has held as follows:*

“16. Code of Civil Procedure does not define either an ex parte judgment or an ex parte decree. It refers only to a judgment and a decree. In the event a judgment is rendered when the defendant fails to defend the suit by his absence, that judgment is known to be an ex parte judgment and the decree drawn on the basis of that judgment is known as an ex parte decree. Hence, even for an ex parte judgment and the decree, the basic ingredients of judgment must be available to the extent to indicate that the Court has applied its mind to the pleading, relief, claimed thereunder, the evidence and the conclusion arrived at by the Court on the above.”

Ultimately, this Court had set aside the judgment therein challenged as one which is not in conformity with the provisions of Section 2 sub-rule 9 r/w Order

IV of C.P.C.

13. In yet another judgment in **G.Selvam and Ors. Vs. Kasthuri (deceased) and Ors.** reported in (2015) 3 LW 705, this Court apart from upholding the right of the petitioner to challenge the ex-parte preliminary decree under Article 227 of the Constitution of India had also set aside the ex-parte decree as contrary to the provisions of Order XX Rule 4 of C.P.C. The learned Judge had followed the ratio laid down in the judgment of the Honourable Apex Court in **C.N.Ramappa Gowda Vs. C.C.Chandregowda (dead) by LRs and Anr.** reported in (2012) 3 LW 326 = 2012 (5) SCC 265.

14. The aforementioned judgments squarely apply to the facts of the instant case and therefore, the judgment and decree passed by the learned Judge is liable to be set aside.

14.The Court should be extra careful while passing exparte decree and it should consider the pleadings and evidence and arrive at a finding as to whether the plaintiff has made out a case for a decree. It requires consideration of the pleadings, evidence and the relief sought for rendering such Judgment. In this regard, it is also relevant to rely upon the Judgment

passed by this Court in the case of ***R.Stella Vs. V.Antony Francis*** reported in ***2019 5 LW 161*** and relevant paragraph is extracted here:-

"19. It is clear from the above judgments that where the defendant contests a suit or submits himself to a decree, it is the bounden duty of the trial Court to follow the procedure under Order XX Rule 4 of the Civil Procedure Code, by giving the concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. If this is not satisfied and a cryptic unreasoned judgment is passed, it is ex facie illegal. When a Court considers an application for delay to set aside the exparte decree, this must also be taken into consideration. If the original judgment itself is ex facie illegal, it cannot be allowed to continue and under such circumstances, it will have a bearing, while the Court considers an application to condone the delay to set aside the exparte decree. The Court need not have a pedantic approach in this regard, since it involves the substantial right of the parties.

15.In the case on hand, after the exparte decree passed as against the 3rd defendant, he filed a petition to set aside the exparte decree with a

delay of 894 days. The fair and decretal order dated 12.08.2015 passed in I.A.No.437 of 2010 in O.S.No.344 of 2010 on the file of the I Additional Sub Court, Salem, is under challenge in this Civil Revision Petition. Therefore, the above Judgment passed by this Court is squarely applicable to the case on hand. Hence, the exparte Judgment passed by the Court below is perverse and illegal. It is not at all a Judgment in the eye of law.

16. In so far as the 2nd point is concerned, the learned counsel for the petitioners relied upon the Judgment in the case of **N.Balakrishnan Vs. M.Krishnamurthy** reported in (1998) 7 SCC 123. Relevant portion is extracted here:-

"9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court

accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

Further, he relied upon the Judgments reported in **(2001) 6 SCC 176** in the case of **M.K.Prasad Vs. P.Arumugam** and relevant paragraphs are given below:-

*"8. In construing Section 5 of the Limitation Act, the court has to keep in mind that discretion in the section has to be exercised to advance substantial justice. The court has a discretion to condone or refuse to condone the delay as is evident from the words "may be admitted" used in the section. While dealing with the scope of Section 5 of the Limitation Act, this Court in **Ramlal v. Rewa Coalfields Ltd.** held: (AIR pp. 363-64, para 6-7)*

"6. Section 5 of the Limitation Act provides for extension of period in certain cases. It lays down, inter alia, that any appeal may be admitted after the period of limitation prescribed therefor when the appellant satisfies the court that he had sufficient cause for not preferring the appeal within such period. This section raises two questions for consideration. First is what is sufficient cause; and the second, what is the meaning of the clause 'within such period'? With the first question we are not concerned in the present appeal. It is the second question which has been decided by the Judicial Commissioner against the appellant. He has held that within such period' in substance means during the period prescribed for making the appeal. In other words, according to him, when an appellant prefers an appeal beyond the period of limitation prescribed he must show that he acted diligently and that there was some reason which prevented him from preferring the appeal during the period of limitation prescribed. If the Judicial Commissioner has held that 'within such period' means 'the period of the delay between the last day for filing the "appeal and the date on which the appeal was actually filed' he would undoubtedly have come to the conclusion

that the illness of Ramlal on February 16 was a sufficient cause. That clearly appears to be the effect As Judgment. That is why it is unnecessary for us to consider what is a sufficient cause' in the present appeal. It has been urged before us by Mr Andley, for the appellant, that the construction placed by Judicial Commissioner on the words "within such period is erosion 5 it is relevant to bear in mind two important

7.In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light

heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chathappan², Section 5 gives the court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words "sufficient cause" receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant.

9. Again in State of W.B. v. Administrator, Howrah Municipality and G. Ramegowda, Major v. Special Land Acquisition Officer this Court observed that the expression "sufficient cause" in Section 5 of the Limitation Act must receive a liberal construction so as to advance substantial justice and generally delays be condoned in the interest of justice where gross negligence or deliberate inaction or lack of bona fides is not imputable to the party seeking condonation of delay. Law

of limitation has been enacted to serve the interests of justice and not to defeat it. Again in N. Balakrishnan v. M. Krishnamurthy this Court held that acceptability of explanation for the delay is the sole criterion and length of delay is not relevant. In the absence of anything showing mala fide or deliberate delay as a dilatory tactic, the court should normally condone the delay. However, in such a case the court should also keep in mind the constant litigation expenses incurred or to be incurred by the opposite party and should compensate him accordingly. In that context the Court observed: (SCC p. 127, para 9)

"9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such

finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

Further in the case of ***Ummer Vs. Pottengal Subida and others*** reported in ***(2018) 15 SCC 127***. The relevant portion is given below:-

"14. In the light of the aforementioned undisputed facts, in our opinion, the High Court should have taken liberal view in the matter and held the cause shown by the appellant as "sufficient cause" within the meaning of Section 5 of the Limitation Act and accordingly should have condoned the delay in filing the appeal. One cannot now dispute the legal proposition that the earlier view of this Court that the appellant was required to explain the delay of each day till the date of filing the appeal has since been diluted by the later decisions of this Court and is, therefore, held as no longer good law."

17.In all the above cases, the Hon'ble Supreme Court of India has held that the High Court should have taken liberal view in the matter and the cause shown by the petitioner should be sufficient cause within the meaning of the Limitation Act and accordingly should have condoned the delay in filing the Appeal.

18.In the case on hand, the 3rd defendant was suffering from heart ailment. In support of the said pleading P.W.2 marked the exhibits as Exs.P.1 to Ex.P.10 before the Court below. Further, Exs.P.21 to Ex.P.22 also revealed that the 3rd defendant was admitted in the hospital and he was taking treatment for his heart ailment. It shows that the reasons stated in the affidavit filed in support of the condone delay petition are sufficient. Therefore, the exparte Judgment and decree passed on 14.10.2003 is not a Judgment in the eye of law and it is liable to be set aside.

19.However, the learned counsel for the petitioners restricted his prayer to the extent that only in respect of the 3rd prayer in the plaint C schedule property, that is declaring the sale deed dated 19.11.1992 registered vide document No.3266 of 1982 executed by the 1st and 2nd

defendant in favour of the 3rd defendant as mentioned in item 1 of the B schedule property is alone may be set aside.

20. Accordingly, the Judgment passed in O.S.No.65 of 2003 dated 14.10.2003 is set aside in so far as the prayer C alone and the order passed dated 12.08.2015 in I.A.No.437 of 2010 in O.S.No.344 of 2010 on the file of the I Additional Sub Court, Salem, is set aside and accordingly, the Civil Revision Petition is allowed. Further the trial Court is directed to complete the trial within a period of three months from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is closed.

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21.01.2021

G.K.ILANTHIRAIYAN.J,
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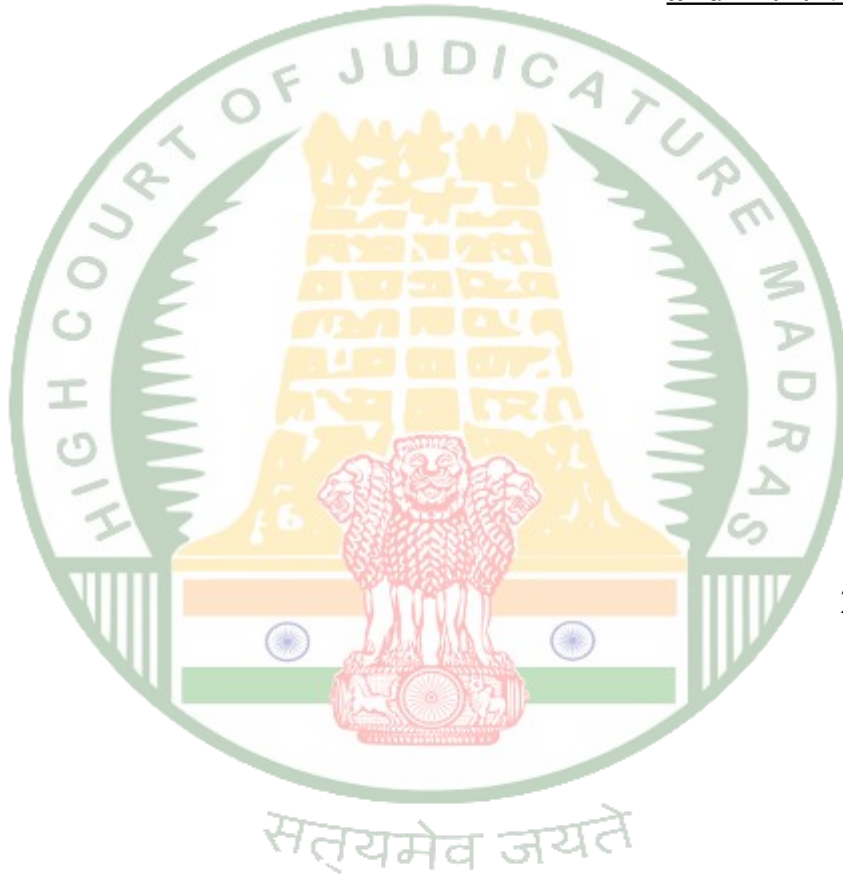
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Index: Yes/No
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C.R.P.(N.P.D).No.3991 of 2015

To
The I Additional Sub Court, Salem.

C.R.P.(N.P.D).No.3991 of 2015
and M.P.No.1 of 2015



21.01.2021

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