

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2021

CORAM

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

CRP.NPD.No. 4097 of 2015

and

MP.No.1 of 2015

1. Chinnakuzhandaiammal

2. Indira

3. Elam gandhi

... Petitioners

Vs.

Kasthuri

... Respondent

PRAYER: The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, praying to set aside the fair and decretal order dated 08.12.2014 in I.A.No.353/2013 in O.S.No.338/2007 on the file of the Principal District Munsif, Ginjee, Villupuram District.

For Petitioners : Mr.R.Rajarajan

For Respondent : Mr.B.Jawahar

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.353/2013 in O.S.No.338/2007 dated 08.12.2014 on the file of Principal District Munsif, Ginjee, Villupuram District, thereby,

dismissing the petition to condone the delay in filing the application to set aside the ex-parte decree.

2. The respondent herein is the plaintiff. She filed a suit for recovery of money, on the strength of the pro-note executed by the petitioner's father. According to the respondent/plaintiff, the second and third petitioner's father borrowed a sum of Rs.50,000/- on 20.01.1997 and executed pro-note. Thereafter, he died on 14.10.2005. Hence, the respondent filed the suit as against the legal heirs viz., the petitioners herein. They were not present before the trial Court and as such, the trial Court appointed Court Guardian in respect of the second and third petitioners concerned and the Court Guardian filed a written statement in the main suit on 30.04.2008. Thereafter, they failed to appear before the trial Court and they were set ex-parte on 05.08.2011 and the ex-parte decree was passed. In the execution petition, the notice was served on the petitioners and thereafter, they came to understand about the ex-parte decree and also filed a petition to set aside the ex-parte decree with the delay of 413 days in filing the application to set aside the ex-parte decree.

3. The respondent filed a counter that the second and third petitioners were already served notice in the main suit and thereafter, they failed to appear before the trial Court and the Court appointed a Guardian. The Court Guardian filed a written statement even as early as on 30.04.2008 itself and therefore, they had knowledge about the pendency of the suit. Now, all the defendants filed a petition to set aside the ex-parte decree. That apart they also received notice in the execution petition for hearing on 06.07.2012. Thereafter, in the execution petition also they were set ex-parte on 06.07.2012. Therefore, even before the ex-parte order they had knowledge about the execution petition as well as the ex-parte decree.

4. Though the trial Court appointed Guardian to file a written statement whether the second and third petitioners had knowledge about the same or not is a question. Further, the delay was calculated from the date of ex-parte decree viz., on 05.08.2011 till the filing of the petition to set aside the ex-parte decree. Further, the learned counsel for the petitioners submitted that the petitioners have got very good case to defend the suit. Since, the amount borrowed by the second and third petitioner's father in the

year 1997 and he said to have executed pro-note on the same day viz., on 20.01.1997. Thereafter, the suit was filed only on 14.08.2007 and it is barred by limitation.

5. Considering the above, this Court is of the view that the petitioners may be given one more opportunity to defend their case. In view of the above, this Civil Revision petition is allowed and the order passed in I.A.No.353/2013 in O.S.No.338/2007 dated 08.12.2014 is set aside and the condone the delay petition allowed on condition that the petitioners shall pay a sum of Rs.5,000/- as costs to the respondent directly within a period of two weeks from the date of receipt of a copy of this order, failing which the order shall stand automatically cancelled. Consequently, the connected Miscellaneous Petition is closed.

सत्यमेव जयते

04.02.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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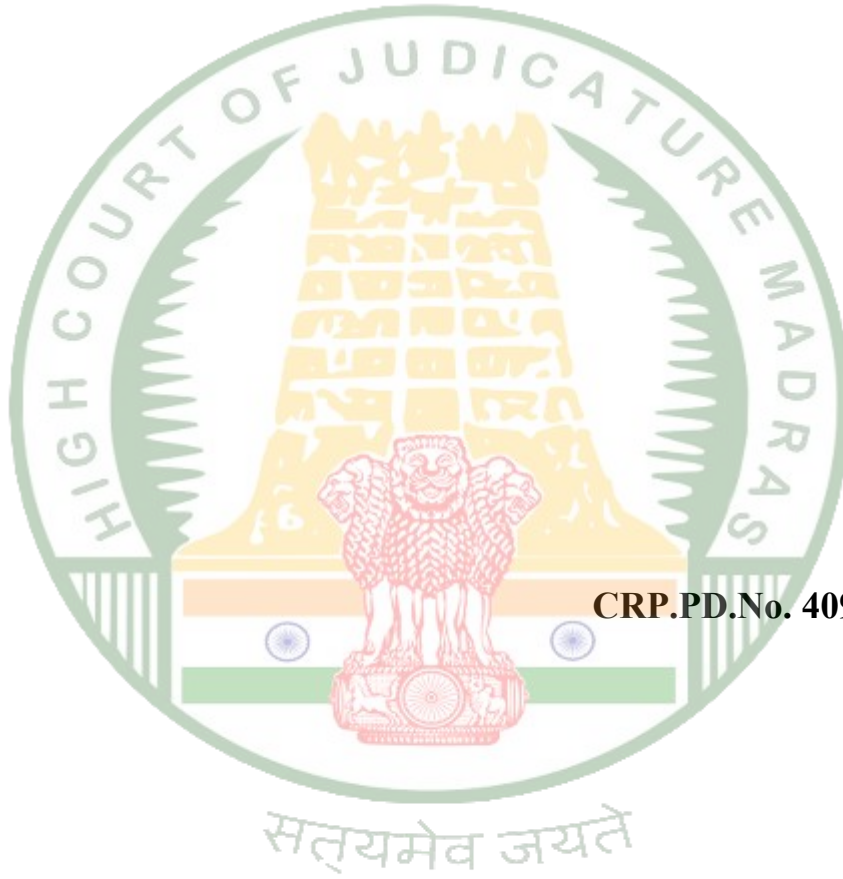
To

The Principal District Munsif, Ginjee, Villupuram District.

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G.K.ILANTHIRAIYAN,J.

Kv



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