

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 08.12.2020]

[ORDERS PRONOUNCED ON : 08.02.2021]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD)No.4708 of 2015

and

C.R.P.(NPD)No.4345 of 2014 and M.P.No.1 of 2014 and
M.P.No. 1 of 2015

and

C.R.P.(NPD)No.79 of 2019 and C.M.P.No.651 of 2019

N.DhanamPetitioner in C.R.P.(NPD)No.4708 of 2015
and C.R.P.(NPD)No.4345 of 2014

N.Dhanapal ...Petitioner in C.R.P.(NPD)No.79 of 2019

...Vs...

N.Dhanapal ...Respondent in C.R.P.(NPD)No.4708 of 2015
and C.R.P.(NPD)No.4345 of 2014

1. P.Balasubramaniam

2. Anitha Rajmohan ...Respondents 1&2 / Claim petitioners/
3rd parties

3. N.Dhanam ...3rd Respondent/2nd respondent/
Judgment Debtor/Defendant
in C.R.P.(NPD)No.79 of 2019

PRAYER in C.R.P.(NPD)No.4708 of 2015.: Petition filed under Article 227 of the Constitution of India., to set aside the decree and judgment dated 30.06.2006 in O.S.No.80 of 2006 on the file of the Additional Subordinate Judge at Chengalpattu.

PRAYER in C.R.P.(NPD)No.4345 of 2014.: Petition filed under Section 115 of C.P.C., to set aside the order dated 28.10.2014 in I.A.No.292 of 2011 in O.S.No.80 of 2006, pending on the file of Additional Subordinate Judge, Chengalpattu.

PRAYER in C.R.P.(NPD)No.79 of 2019: Petition filed under Section 115 of C.P.C., to set aside the fair and decretal order dated 16.03.2017 made in E.A.No.278 of 2015 in E.P.No.159 of 2007 on the file of Additional Subordinate Judge, Chengalpattu and dismiss the E.A.No.278 of 2015.

C.R.P.(NPD)No.4708 of 2015 and
C.R.P.(NPD)No.4345 of 2014:-

For Petitioner : Mr.S.Vasudevan
For Respondent : Mr.M.Kempraj

C.R.P.(NPD)No.79 of 2019:-

For Petitioner : Mr.M.Kempraj
For R1&R2 : Mr.A.R.Nixon
For R3 : Mr.S.Vasudevan

COMMON ORDER

The petitioner in C.R.P.(NPD)No.4345 of 2014 and C.R.P.(NPD)No.4708 of 2015 is the landlady. While, the petitioner-Dhanapal in C.R.P.(NPD)No.79 of 2019 is the Agreement Holder who obtained ex-parte decree in O.S.No. 80 of 2006 and the other parties are third party purchaser.

2. For the sake of convenience, the parties are referred to Landlady, Agreement Holder and third party purchaser.

3. The Agreement Holder Dhanapal filed O.S.No.80 of 2006 before the Additional Subordinate Judge, Chengalpattu for the Specific Performance of the suit Sale Agreement dated 18.11.2015 executed by the landlady Dhanam.

4. The suit was decreed on 30.06.2016 and hence the Landlady/Judgment Debtor filed a petition to set aside the ex-parte decree along with the petition to condone the delay of 1826 days in setting aside the ex-parte decree in I.A.No.292 of 2011.The said application was dismissed and hence

C.R.P.(NPD)No.4345 of 2014 is filed. The Landlady-Dhanam also filed C.R.P.(NPD)No.4708 of 2015 challenging the ex-parte decree under Article 227 of the Constitution of India.

5. Pending the adjudication of these two C.R.Ps based upon the ex-parte decree, it appears that the Agreement Holder/Decree Holder has preferred E.P.No.159/07 before the Trial Court for execution of the decree wherein E.A.No.278/2015 filed by the Third party purchaser wherein the above said application was allowed on the ground that on the date of filing of the suit, the Landlady is not the owner of the property and the purchaser was not impleaded as a party in the suit consequently not a party to the decree and possession is also hand over to the subsequent purchaser even before passing decree and hence E.A.No.278/15 was allowed by an order dated 16.03.2017. Aggrieved against the said order, the Agreement Holder/ Decree Holder has preferred the C.R.P.(NPD)No.79 of 2019.

6. Mr.M.Kempuraj, learned counsel for the Agreement Holder/Decree Holder, the petitioner in C.R.P.(NPD)No.79 of 2019 could contend that in the absence of any termination notice to the petitioner herein the finding rendered by the Trial Court is erroneous and the Trial Court has not considered the scope of Section 47 of C.P.C and challenged the finding rendered by the Execution Court and prayed for rejection of claim petition. Also made submission in respect of other two C.R.Ps wherein the Agreement Holder is arrayed as respondent as decree-holder.

7. The learned counsel for the petitioner in C.R.P.(NPD)No.4345 of 2014 could contend that:

(i) The petitioner is a poor lady and during the time when she has received the summons, her husband was met with major accident and was admitted in the hospital and one of his fingers has been amputated and during the period, she had also lost her mother-in-law and there was a calamity in the family.

(ii) There was also a compromise talk between the parties, after decree which fact also has been completely negated by the Trial Court.

(iii) The Advocate whom the petitioner had engaged during the Execution Petition has also shifted his practice to Tindivanam from Chengalpattu.

8. The learned counsel for the petitioner in C.R.P.(NPD)No.4708 of 2015 could contend that:

(i) The Court below has passed a cryptic unreasoned judgment and decree without even framing "point for determination" and the same is a non-speaking one. Thus, as per the rulings of the Hon'ble Supreme Court of India and the High Courts, such a one line judgment does not satisfy the requirements of law under Order XX Rule 4 of C.P.C and even without rendering a finding of facts and law does not qualified to be a judgment.

(ii) The judgment and decree passed by the Trial Court is not in conformity with the provisions of the Code of Civil

Procedure under Sections 2(2), 9, 33 and there has been no judicial determination and also made submission in C.R.P.(NPD)No.79 of 2019 on behalf of the Landlady/third respondent therein.

9. The learned counsel for the respondents 1&2 Claim Petitioner / third party purchaser in C.R.P.(NPD)No.79 of 2019 has made submission in support of the order passed by the Execution Court.

10. Submissions of all the parties heard and perused the lower Court records, I find that:

(i) the suit Sale Agreement is dated 18.11.2005. The total consideration is for a sum of Rs.4,80,375/- out of which, a sum of Rs.15,000/- was paid by the Agreement Holder as an advance.

(ii) As per the terms of the Sale Agreement, the period for completion of the transaction is fixed at one month and the petitioner should pay the balance of sale consideration and to complete the sale transaction.

(iii) The Sale Deed is marked as Exhibit A1. Notice sent to the parties are marked as Exhibits A6 to A8.

(iv) I find that Written statement was filed by the landlady but she has not chosen to contest the suit. The balance of the amount to be paid is Rs.4,65,375/-. The judgment was passed on 30.06.2006. As per class 3 of the decree, the balance of sale consideration namely 4,65,375/- has to be paid within a period of one month from the date of the decree.

11. Mr.A.R.Nixon, learned counsel appearing for the purchaser/third party could contend that the class 3 of the decree regarding payment of balance of sale consideration ought to have been deposited by the Agreement Holder within a period of one month from the date of decree. However the same is deposited only on 10.04.2007 and hence as the conditional clause in the decree for payment of balance of amount is not complied with and for non-compliance of conditional clause in the decree and he is not entitled for the execution of the said decree is found to have force.

12. C.R.P.(NPD)No.4708 of 2015:-

After hearing the submissions of all the 3 Advocates for the respective parties and also perused the plaint and the written statement filed in O.S.No.80/2006 and the suit sale Agreement (Ex.A1). The terms of Sale Agreement are not in dispute that are extracted as supra.

13. It is seen from the records that (a) the above said suit O.S.No.80/2006 was filed before the Additional Subordinate Judge at Chengalpattu for Specific Performance for enforcing an Agreement of Sale entered into between the petitioner and the respondent herein dated 18.11.2005.

(b) The present suit is one for Specific Performance and the Court in a suit for Specific Performance has to scrutinize the facts set out in the plaint to find out whether all the requirements, in particular, those indicated in Section 16 of the Specific Relief Act regarding the readiness, willingness has been complied with or not.

(c) In 1999(8) SCC 396[Balraj Taneja and another Vs.Sunil Madan and another], wherein the Hon'ble Supreme Court of India has laid down the principles to be followed in a suit for Specific Performance even in the absence of the defendant.

(d) Whether a case is contested or decided ex-parte the Court has to write the judgment in conformity with C.P.C or at least must set out the reasoning by which the controversies are resolved.

(e) The principles that the factum of the defendant having been set ex-parte, does not invite a punishment in the form of an automatic decree both under Order VIII Rule 10 C.P.C and on invocation of Order IX C.P.C., the Court is nevertheless duty bound to diligently ensure that the plaint stands proved and prayed therein are worthy of being granted.

(f) The petitioner herein relies upon the following Case Laws:-

(i) 1999 (8) SCC 396 [Balraj Taneja and another Vs.Sunil Madan and another] - the relevant portions of the said judgment is as under;

"41. There is yet another infirmity in the case which relates to the "judgment" passed by the single Judge and upheld by the Division Bench.

42. "Judgment" as defined in Section 2(9) of the Code of Civil Procedure means the statement given by the Judge of the grounds for a decree or order. What a judgment should contain is indicated in Order 20, Rule 4(2) which says that a judgment:

"shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision".

It should be a self-contained documents from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the Court and in what manner. The process of reasoning by which the Court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment.

(ii) 2011 (3) CTC 168 [Meenakshisundaram Textiles Vs.Valliammal Textiles Ltd] - the relevant portion of the said judgment is as under:

"In the event the defendant is set ex-parte, the Court should be extra careful in such case. It should consider pleadings and evidence to arrive at a finding as to whether the plaintiff is entitled to a decree and in ex-parte decree should show an application of minimum requirement of consideration of pleadings and evidence. Judgment passed by the Trial Court is not in conformity with the provisions of Code of Civil Procedure - Impugned judgment and decree set aside".

(iii) 2015 (3) LW 241 [Arul Dhas Vs.F.Hubert&another]

- the relevant portion of the said judgment is as under:-

"Court passed a decree consequent to the non-appearance of the petitioner. It was a default decree does not satisfy Section 2(9) as it contains no reason. Practice of passing ex-parte judgment and decree on account of non-appearance of defendant, deprecated".

(iv) 2015 (3) LW 705 [G.Selvam and others Vs.Kasthuri (deceased) and others] - the relevant portion of the said judgment is as under:

"Trial Court did not frame any issues. It examined PW1 and found that the claim made by him is proved. Judgment contrary to Order 20 Rule 4".

"As per Rule 20(4) of the Code of Civil Procedure, judgment of Courts shall contain points for consideration, the decision thereon and a reasons for such decision."

(v) 2018 (4) CTC 366 [D.Rajini Sugumar Vs.Pushpa Kumari] - the relevant portion of the said judgment is as under:

"Ex-parte judgment is a non-speaking one line order. Held violative of fundamental basic principles of justice and fair play".

"Exercise of jurisdiction under Article 227 when warranted (i) Events give rise to serious misgivings in mind of Court

and cast a cloud on order is passed, or (ii)
Order is violative of fundamental basic
principles of justice and fair play, or (iii)
Patent or flagrant error in procedure of law
crept in resulting in manifest injustice".

(vi) 2019(4) CTC 61 [Chandra and others
Vs.M.Devendran], the relevant portion of the said judgment is
as under:

"The Court must apply its mind and
give reasoning before decreeing the suit".

57. Since the judgment and decree
unreasoned and shows total non-application
of mind, I am of the view that the Court
should condone the delay".

(vii) 2019 (5) CTC 673 [G.K.Suganya & others
Vs.N.P.Sekar], the relevant portion of the said judgment is as
under:

"Judgment in a suit is without
reasoning it was passed without any
discussion on facts, it is prima-facie not
binding. In a suit for specific performance,
discretionary relief is to be granted after
application of mind. In the present case, the
judgment is unreasoned. The suit decreed

mechanically. Set aside by this Hon'ble Court".

(viii) 2019 (6) CTC 427 [R.S.Sornam Vs.Rathinam & others], the relevant portion of the said judgment is as under:

"Suit allowed without assigning any reason. Held, judgment ex-facie illegal and not in consonance with Order 20 Rule 4 & 5 of the Code of Civil Procedure. Court duty bound to satisfy itself plaintiff has fulfilled minimum requirement to get decree. Trial Court to independently consider the same while passing a judgment in the suit. Even where the defendant set ex-parte or submitting himself to a decree, non-application of independent judicial mind, will result in parties obtaining collusive decree - Decree and judgment set aside".

14. In view of the above citations and on perusal of the copy of the judgment which is cryptic order which shows that there is a non application of mind and the judgment is passed in contravention to the principles that has been laid down by

the High Courts and Supreme Court in various judgments. On the perusal of the said judgment and decree, it clearly shows that the Court has not applied its mind with regard to the judgment, which does not contain bare minimum facts, would not qualify itself as a judgment.

15. "Judgment" is a basic requirement for a Court and it means a decision or conclusion reached after consideration and deliberation. Furthermore, if the defendant remains absent in a suit, the Court is bound to be more diligent and ensure that plaintiff stands proved and the prayer therein worth of being granted and merely asking of it, the Court should not decree a suit, as that has been done in the present case.

16. Accordingly, this Civil Revision Petition is allowed. The judgment and decree passed in O.S.No.80/2006 dated 30.06.2006 is set aside.

17. C.R.P.(NPD)No.4345 of 2014:-

This Civil Revision Petition has been filed under Section 115 of C.P.C., challenging the order passed in I.A.No.292/11 to

condone the delay of 1826 days in filing the petition to set aside the ex-parte decree.

18. The above suit was filed before the Additional Subordinate Judge at Chengalpattu for Specific Performance for enforcing and Agreement of Sale entered into between the petitioner and the respondent herein dated 18.11.2005.

19. The petitioner herein chose to file I.A.No.292 of 2011 in the above suit to condone the delay of 1826 days in filing a petition to set aside the ex-parte decree. The contention of the petitioner was even though she received summons during the year 2006, her husband met with an accident and was seriously admitted in the Hospital. One of his fingers was amputated and her mother-in-law died subsequently and furthermore, being a lady, without much male help was attending her husband and also she had to necessarily organize obsequies of her mother-in-law.

20. The petitioner herein received a notice in the Execution Petition and engaged the services of one Mr.Sakthivel, Advocate who even though filed counter in the E.P shifted his practice from Chengalpattu to Tindivanam and did not inform the petitioner about the E.P proceedings. Being a poor and illiterate lady, the petitioner herein did not know much about the Court proceedings and the said Advocate also did not take any steps to have the decree ex-parte. Only later on, the petitioner approached the another Advocate in Chengalpattu, who had filed I.A.No.292/2011 to condone the delay and to set aside the ex-parte decree application. In the said process, there arose a delay of 1826 days.

21. The respondent had filed his counter denying the contentions of the petitioner herein and his contention was, the delay was enormous and no proper sufficient cause is made out by the petitioner herein and requested for dismissal of the I.A filed by the petitioner herein. The Additional Subordinate Judge at Chengalpattu by an order dated 28.10.2014, did not find favour with the contentions raised by the petitioner herein

dismissed I.A.No.292 of 2011 against which, the above C.R.P has been filed.

22. The petitioner is an illiterate poor lady and at the relevant point of time when her husband met with an accident and was hospitalized for treatment, she has also lost her mother-in-law and her previous Advocate, has shifted to District would all come certainly within the meaning of sufficient cause, has not been taken into consideration at all by the Trial Court.

23. The learned counsel for the petitioner has relied upon the decision reported in (i) 2016(2) CTC 714 [Rajangam and others Vs.Senthamaraj and others] - the relevant portion of the said judgment is as under:

"8. The length of delay alone is not a criteria to dismiss the petition and the Court is expected to consider the nature of the claim made in the suit, the nature of defence taken by the defendant,

the stake involved in the matter and the possibility of rendering substantial justice to the parties. It is also represented that the inconvenience caused to other side can be compensated by costs and the defendants are ready to pay the costs if imposed by this Court".

(ii) 2016 (5) CTC 117 [Sarasu Vs.Ravi] - the relevant portion of the said judgment is as under:

"9. When a Court of Law deals with an application to condone the delay filed under Section 5 of the Limitation Act, such application will have be generally viewed in a liberal and lenient way to do substantial justice between the parties. By projecting an application to condone the delay as per Section 5 of the Limitation Act, belatedly, no party will file the same with a malaide intention. If a party files a delay condonation application belatedly, he or she runs a serious risk.

10. However, if an application filed under Section 5 of the Limitation Act is allowed by this Court, to advance the

cause of substantial justice, then the maximum that can happen is that a party will be allowed to partake in the main arena of legal proceedings and the main cause can be decided on merits. Per contra, if a meritorious matter is thrown out at the threshold or at early stage the cause of justice will be certainly defeated. In a condonation of delay application filed under Section 5 of the Limitation Act, 1963 the length and breadth of the delay is not a material/relevant factor".

(iii) 2019 (4) CTC 61 [Chandra and others

Vs.M.Devendran] - the relevant portion of the said judgment is as under:

"Delay of 2959 days condoned by this Hon'ble Court, since the judgment and decree is unreasoned and shows total non-application of mind, I am of the view that the Court should have condoned the delay".

Thus, as laid down in the above said judgments, the delay can be condoned and refusing to condone the delay can

result in a meritorious matter, being thrown out at the very threshold and cause of justice being defeated. Thus, the present suit being a specific performance suit of an immovable property and the valuable right of the petitioner cannot be thrown out on technicalities.

24. In the decision reported in C.R.P.(NPD)No.287 of 2018 dated 05.10.2018, the learned Judge of this Court relying upon the decision reported in **2013 (12) SCC 649 [Esha Bhattacharjee Vs.Managing Committee of Reghunathpur Nafar Academy & others]** and **2001 (6) SCC 176 [M.K.Prasad Vs.P.Arumogam]** has allowed the petition to condone the delay on payment of heavy costs.

25. Since the order has been passed in the above C.R.P(NPD)No.4708 of 2015 wherein the judgment and decree has been set aside for the reasons stated therein, I am inclined to allow this Civil Revision Petition by condoning the delay as this Court is conscious of the fact that some prejudice have been caused to the respondent herein in defending the present

C.R.P as well as to take the steps initially in execution petition and hence this Civil Revision Petition is allowed and the petitioner shall pay a sum of Rs.25,000/- towards exemplary costs to the respondent/Agreement Holder within a period of three weeks through the Advocate at Chennai.

26. C.R.P.(NPD)No.79 of 2019:-

As stated supra this C.R.P has been filed by the Agreement Holder/Decree Holder against the order passed in E.A.No.278/15 whereby under Section 47 of C.P.C filed by the third party was allowed.

27. Brief facts:-

The respondents/3rd parties filed a petition under Section 47 on the ground that they purchased the suit schedule property on 16.04.2012. But only on 22.07.2015 while they were cleaning the suit schedule property, the petitioner came and objected to the same. Further, they had preferred a police complaint against the petitioner, but the police did not take any action as if the matter is civil in nature.

Hence, they had filed a petition under Section 47 in which they have stated that the Judgment Debtor had filed a petition to set aside the ex-parte Decree dated 30.06.2006 with condone the delay petition which was dismissed on 28.10.2014. As against the same, the Judgment Debtor has preferred C.R.P.(NPD)No.4345 of 2014.

28. Mr.M.Kemp raj, learned counsel for the revision petitioner could contend that the finding at Para 11 of the order of Execution Court is based upon the Reply Notice dated 04.04.2006 and the same is not correct.

29. Per contra, Mr.A.R.Nixon, learned counsel for the respondents/claim petitioners could contend that as per clause 3 in the decree, the Decree Holder/Power Agent is directed to deposit the balance of the sale consideration of Rs.4,65,375/- within a period of one month. However without complying with the said conditional order, he has deposited the amount only much after the time fixed for the amount namely 10.04.2007 and hence for non-compliance of the conditional clause in the decree the execution petition itself is not maintainable.

30. The next contention by the said counsel for the claim petitioners/respondents is that they are bonafide purchaser for valuable consideration and before purchasing the property they have applied for Encumbrance Certificate from Sub-Registrar office and also enquired in the neighbourhood as there was no entry of encumbrance in the Sub-Registrar office, they have purchased the property for valuable consideration and on the date of filing of the E.P, the original landlady is not longer owner of the property. Even on the date of filing of the suit, she is not a owner of the property and hence, the suit is bad for non-joinder of necessary parties and made submissions in support of the order passed by the Execution Court. Since I have passed an order in C.R.P.(NPD)No.4708 of 2015 and C.R.P.(NPD)NO.4345 of 2014 whereby the decree passed in the main suit O.S.No.80/2006 was set aside and hence I find that there is nothing survive in this petition and hence, this C.R.P shall stands closed.

31. In the result,

(i) C.R.P.(NPD)No.4708 of 2015 is allowed. No costs.

(ii) C.R.P.(NPD)No.4345 of 2014 is allowed with costs.

The petitioner shall pay a sum of Rs.25,000/- towards exemplary costs to the respondent/Agreement Holder through the Advocate at Chennai within a period of three weeks from the date of receipt of a copy of this order.

(iii) In view of the orders passed in the above C.R.P.(NPD)No.4708 of 2015 and C.R.P.(NPD)No.4345 of 2014, there is nothing survives for adjudication and all the points raised are left and decided by the Trial Court and hence, this C.R.P.(NPD)No.79 of 2019 is closed. No costs.

(iv) The Trial Court is directed to take the suit on file and it is open to the respondents 1&2 in C.R.P.(NPD)No.79/2019 to file appropriate petition to implead themselves in the main suit, if they so be advised, and if any such application is filed, the Trial Court is hereby directed to dispose of the said application within a period of four weeks from the date of such filing application and granted time for

filing additional written statement, if any, to the main defendant and the purchaser if they are impleaded for which another six weeks may be granted and complete the trial within a period of four months from the conclusion of the above said pleadings.

(v) The Trial Court is expected to frame necessary issues especially that are necessary for the suit for Specific Performance viz., whether the plaintiff is ready and willing to perform his part of the contract and to determine the suit in accordance with law.

08.02.2021

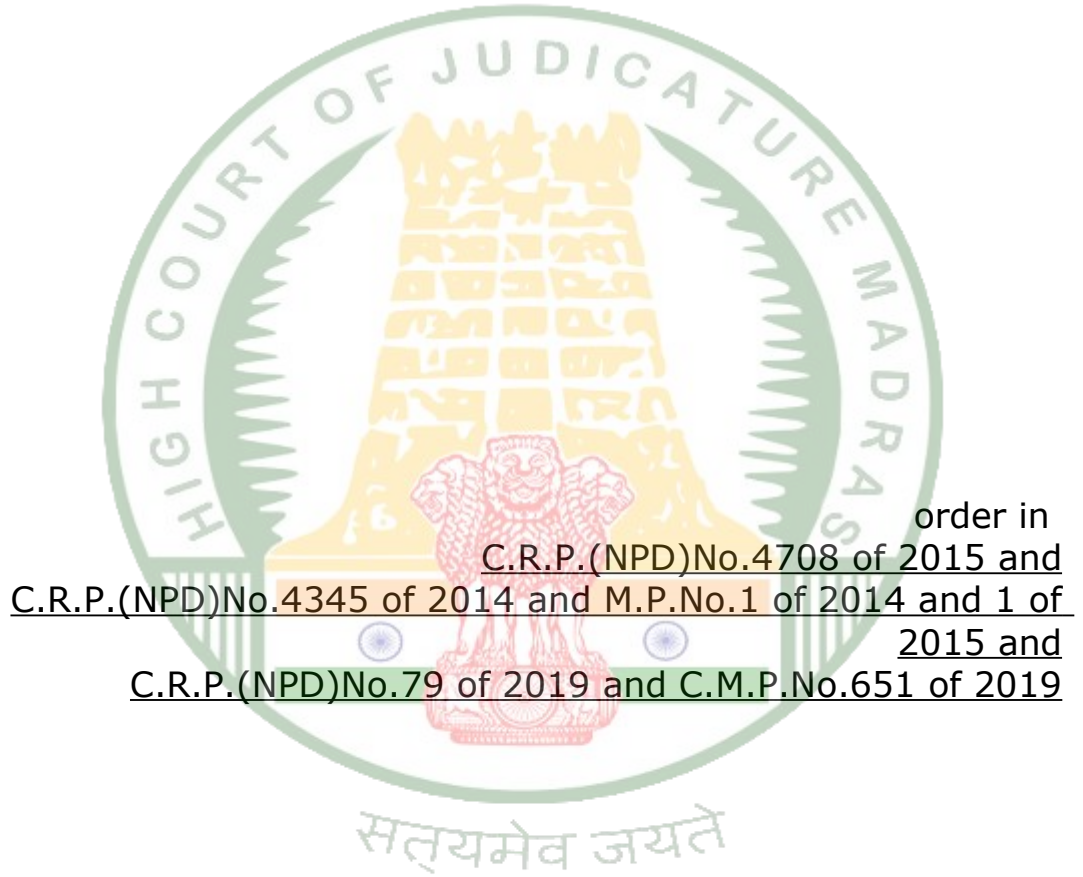
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Index:yes/No
Internet:Yes/No
Speaking Order:Yes/No
To
The Additional Subordinate Judge at Chengalpattu

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C.R.P.(NPD)Nos.4708 of 2015, 4345 of 2014 and 79 of 2019

RMT.TEEKAA RAMAN,J.,

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