

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 23.03.2021

CORAM:

THE HONOURABLE MRS. JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P.(NPD)No.616 of 2021

and

C.M.P.No.5327 of 2021

K.Neelakandan (died)

N.Sumathi (died)

1.Girija

2.Raja

3.Saraswathi

...Petitioners

Vs

Parvathi

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order and decree made in I.A.No.19 of 2015 in O.S.No.63 of 2007, dated 23.01.2021, on the file of the Subordinate Judge, Gudiyattam, Vellore District.

For Petitioners : Mr.K.A.Ravindran

ORDER

The prayer sought for in this petition is to set aside the order made by the trial Court in I.A.No.19 of 2015.

2. The respondent herein, who is the plaintiff in O.S.No.63 of 2007, had filed the suit for specific performance and permanent injunction. The defendant was set ex-parte and the suit was decreed in favour of the plaintiff on 24.07.2008. The defendant was directed to execute a sale deed in respect of the schedule mentioned property in favour of the plaintiff, after receiving the balance sale price. Thereafter, the defendant had died on 11.08.2009 and his legal heirs were brought on record, who had filed I.A.No.19 of 2015 under Section 5 of the Limitation Act seeking to condone the delay of 2173 days in filing the petition to set aside the ex-parte decree. The respondent/plaintiff had filed a counter affidavit in the interlocutory application alleging that the petitioners were well aware of the decree and they were also intimated about the same through a notice in EP.No.107 of 2011 and in the delivery petition in EA.No.26 of 2014.

3. The learned Subordinate Judge, Gudiyatham, Vellore District, by order dated 23.01.2021, had dismissed the application, stating that the petitioners therein have not chosen to take necessary steps to set aside the ex-parte decree immediately after the receipt of notice in the execution

petition. The learned Judge further held that the petitioners were not diligent in prosecuting the case and the enormous delay was not satisfactorily explained by the petitioners and hence, the learned Judge was not justified in condoning the delay petition. Aggrieved by the order passed in the interlocutory application, the present revision has been filed.

4. The learned counsel for the petitioner would submit that the delay in filing in the application was only due to the fact that the petitioners were kept in dark and they were not informed about the legal proceedings, even after the death of the defendant. The learned counsel further submitted that the petitioners were not given opportunity to prove their case before the Court below. It was further contended that the Court below ought to have allowed the condone delay application on the ground that the cause of justice required the adjudication to be done on merits, while exercising discretionary relief of Specific Performance, to which, the learned counsel had relied on the judgment reported in **2019 (6) CTC 344**. Hence, the learned counsel for the petitioner prays to allow this petition.

5. Heard the learned counsel for the petitioner and perused the materials place before this Court.

6. The suit in O.S.No.63 of 2007 was decreed on 24.07.2008. Thereafter, the defendant had died on 11.08.2009, due to which, his legal heirs were brought on record in the interlocutory application, which was filed to condone the delay in filing the application for setting aside the ex-parte decree. In the affidavit filed in support of the interlocutory application, it is seen that there was no sufficient ground made by the petitioners/defendants in filing the petition with such a huge delay. It is further seen from the counter affidavit filed by the respondent/plaintiff that the petitioners were intimated about the decreetal order passed by serving notice to them. It is evident from the counter affidavit that an execution petition was filed, in which the petitioners were impleaded as legal heirs and they have also filed their counter through their Counsel. Hence, the petitioners' application for condonation of delay, without proper reasoning, was rightly dismissed by the Court below.

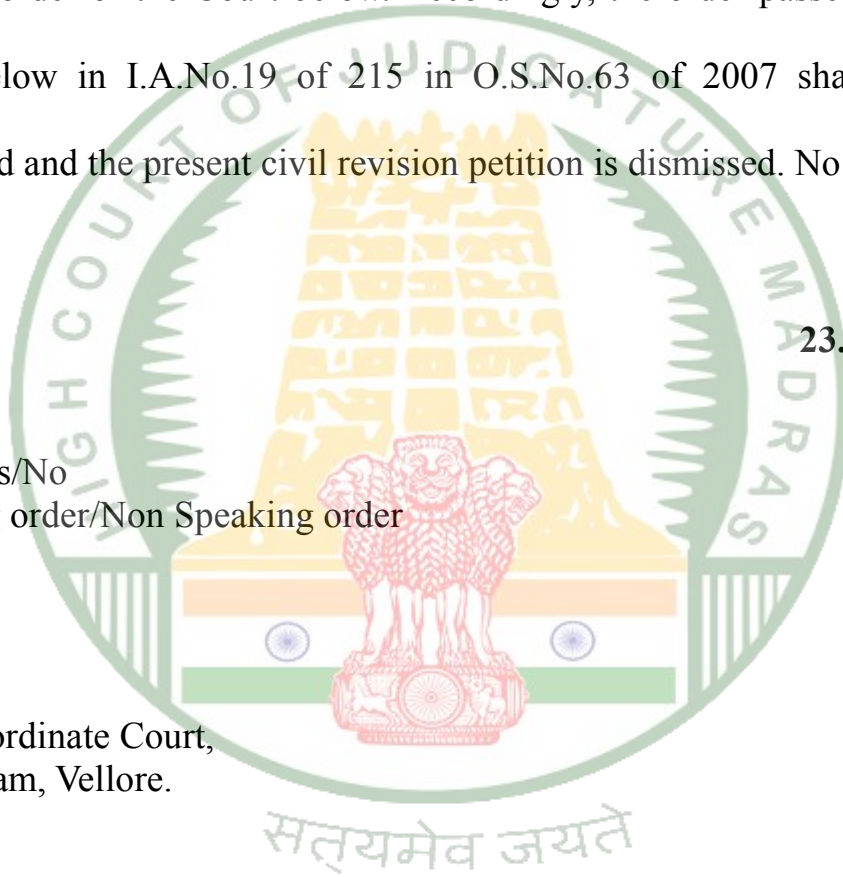
7. I am in agreement with the findings rendered by the Court below in not allowing the application for condonation of delay and I also do not find any merits made by the petitioners herein in warranting interference with the order of the Court below. Accordingly, the order passed by the Court below in I.A.No.19 of 215 in O.S.No.63 of 2007 shall stand confirmed and the present civil revision petition is dismissed. No costs.

23.03.2021

Index: Yes/No
Speaking order/Non Speaking order
sbn

To

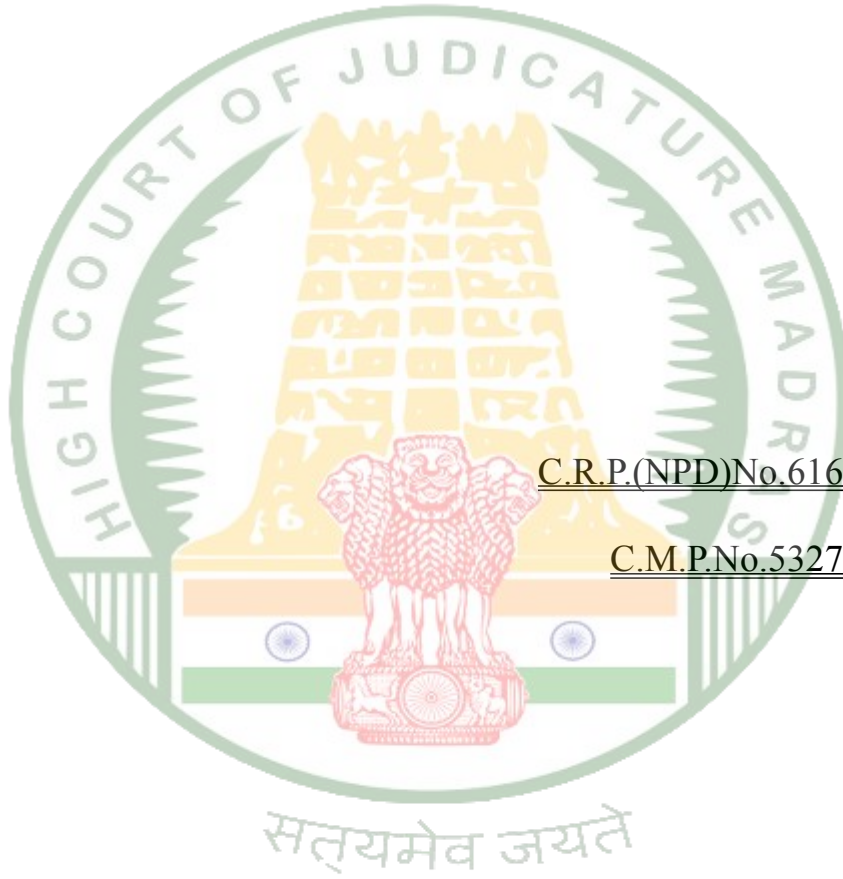
The Subordinate Court,
Gudiyattam, Vellore.



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V.BHAVANI SUBBAROYAN, J.

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