

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2021

CORAM:

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

C.R.P (NPD) No.1684 of 2018

and

CMP.No.9277 of 2018

K.Raja

... Petitioner

Vs.

P.Ambikadoss

... Respondent

Prayer : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to allow the Civil Revision Petition against the order and decretal order in I.A.No.423 of 2017 in O.S.No.323 of 2004 passed by the learned District Munsif, Nagapattinam dated 23.03.2018.

For Petitioner : Mr.V.Raghupathi

For Respondent : Mr.S.Senthil

ORDER

This Civil Revision Petition is directed against the fair and decretal order passed in I.A.No.423 of 2017 in O.S.No.323 of 2004 dated 23.03.2018 on the file of the learned District Munsif, Nagapattinam, thereby dismissing the petition to condone the delay of 3610 days in filing the application to set aside the ex-parte decree.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed a suit for permanent injunction in respect of the suit property. On receipt of the summons, the petitioner engaged his counsel and also filed written statement on 09.08.2004. Thereafter, the petitioner failed to appear before the Trial Court and as such, he was set ex-parte and the ex-parte decree was passed on 17.04.2007. Therefore, the petitioner filed a petition to set aside the ex-parte decree with a delay of 3610 days along with the petition to condone the delay in filing the same.

3. On a perusal of the affidavit filed in support of the condone delay petition, it reveals that the petitioner engaged his counsels viz., Thayumanavan and Jayaraman on behalf of him before the Trial Court. After filing the written statement, both the counsels died on 11.07.2007 and 26.12.2008. Therefore, no one was there to instruct him to appear before the Trial Court. When the respondent executed the decree and lodged a complaint before the jurisdictional police station on 03.04.2017, the petitioner came to know about the ex-parte decree passed against him in the suit filed by the respondent. Therefore, there was a delay of 3610 days in filing the petition to set aside the ex-parte decree.

4. The learned counsel for the petitioner relied upon the judgment reported in AIR 1987 SC 1353 (**Collector, Lank Acquisition -vs- Mst.Katiji & Others**) in which it has been held as follows:-

“3. “Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.”

5. The learned counsel for the respondent submitted that a perusal of the written statement would reveal that the petitioner was represented before the trial Court by two counsels viz., Jayaraman and K.Anbazhagan. Since the said K.Anbazhagan is very much alive, the said plea cannot be considered and the Trial Court rightly dismissed the petition to condone the delay of 3610 days.

6. In the case on hand, except the reason that the counsel engaged by the petitioner was died and due to which no one was there to instruct the petitioner to appear before the Trial Court, there is no other reason for the delay in filing the petition to set aside the ex-parte decree. As stated above, on a perusal of the affidavit filed in support of the condone delay petition, it is found that the petitioner was represented before the Trial Court by two counsels viz., Jayaraman and Thayumanavan. That apart, both the counsels died on 11.07.2007 and 26.12.2008 respectively. Whereas, the ex-parte decree was passed as early as on 17.04.2007 itself. Therefore, on the date of passing the ex-parte decree, both the counsels were very much alive. Therefore, the above judgment is not applicable to the case on hand and the Trial Court rightly dismissed the petition. This Court finds no infirmity or illegality in the order passed by the trial Court.

7. In view of the above discussion, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

No costs.

17.06.2021

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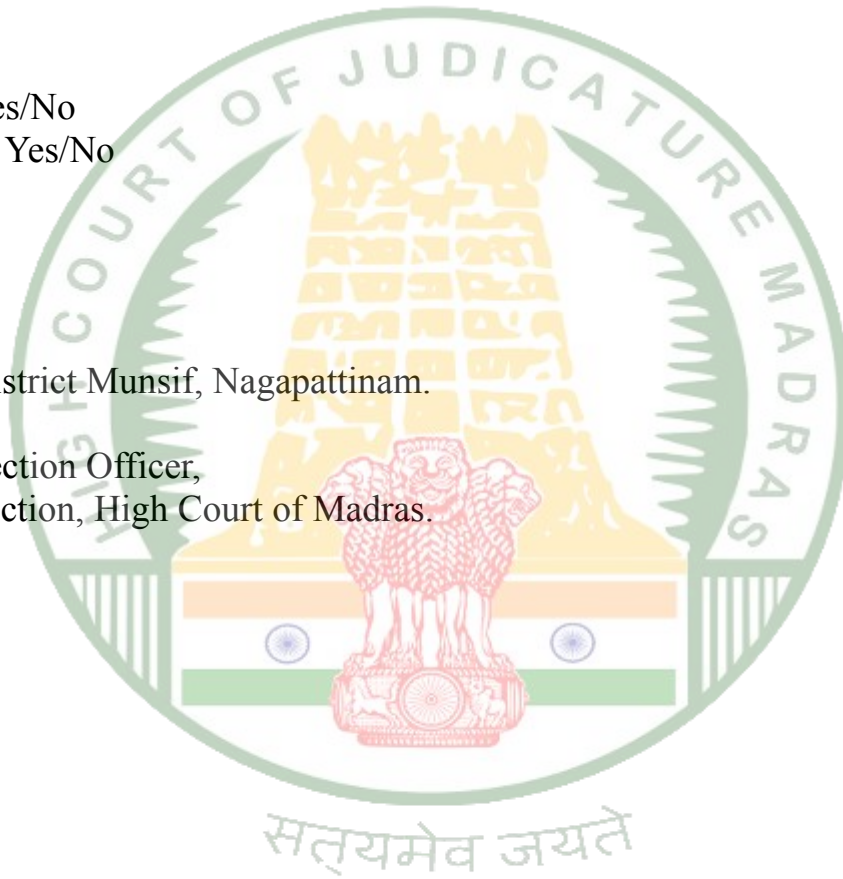
Index : Yes/No

Internet : Yes/No

To

1. The District Munsif, Nagapattinam.

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



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G.K.ILANTHIRAIYAN.J.,



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