

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (NPD) No.863 of 2021

and

C.M.P.No.7098 of 2021

S.Jayamani

..

Petitioner/Petitioner/Respondent/Defendant

Vs

G.Vijayan

..

Respondent/Respondent/Petitioner/Plaintiff

Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order dated 19.02.2021 made in E.A.No.10 of 2019 in E.P.No.331 of 2018 in O.S.No.93 of 2011 on the file of the Learned Special Officer cum Additional Sub Judge, Puducherry.

For Petitioner ..

Mr.R.Thiagarajan

For Respondent ..

No appearance

ORDER

O.S.No.93 of 2011 had been instituted by G.Vijayan against S.Jayamani seeking a judgment and decree to pay sum of Rs.2,04,000/- together with interest at 12% per annum and Rs.1,50,000/- from the date of plaint till date of realization.

2.The defendant joined in the proceeding and filed his written statement. Based on the pleadings, issues were framed. Both the plaintiff and the defendant examined their witnesses. The plaintiff also marked documents. On the side of plaintiff two witnesses were examined and on the side of the defendants three witnesses were examined. Finally, the suit was decreed by judgment dated 11.08.2017. The defendant, thereafter, filed an Appeal Suit, however with delay. The matter is still pending before the Appellate Court and the application seeking condonation of delay is also pending.

3.In the meanwhile, the plaintiff filed E.P.No.331 of 2018. In the Execution Petition, the plaintiff sought to bring the property which had been given in the schedule to the Execution Petition for sale. In the said Execution Petition again the defendant remain exparte. Thereafter, the defendant filed E.A.No.10 of 2019 seeking to condone

the delay of 119 days in filing application to set aside the exparte order in the Execution Petition.

4.Among other contentions, in the affidavit filed in support of the said E.A.No.10 of 2019, it had been very specifically stated that the defendant was not the owner of the schedule mentioned property. It had been observed in the course of the order, that the defendant herein had already sold the said property in the year 2018. It is therefore, seen that the defendant herein had been very careful in preventing the property from being brought for sale by the decree holder.

5.Mr.R.Thiyagarajan, learned counsel appearing for the petitioner / defendant sought indulgence of this Court to take a sympathetic view and permit the petitioner herein to participate in the Execution Petition.

6.However, a specific observation of the learned Judge in the course of the order which is now under question in this present Revision Petition is that, the present petitioner / defendant had very specifically stated that the property in the Execution Petition had been

sold away by the petitioner / defendant way back in the year 2018 itself and therefore, the attachment order passed by the Court is not at all valid. It is therefore, seen that the petitioner / defendant has been more cleverer than the decree holder. He has actually sold away the property which is now sought to be attached. The property is not in existence. That is an issue which the Trial Court will have to address.

7.I am confident, that it will be addressed in the manner known to law since, the suit is of the year 2011 and the said sale had been taken place in the year 2018 pending the suit.

8.With respect to the reasons for condonation of the delay of 119 days, no specific reason had actually been given. The only statement made is that an Appeal had been filed before the Principal District Court, along with an application to condone the delay of filing an Appeal and therefore, permission must be given to participate in the Execution Petition.

9.I do not find this to be a valid reason. The petitioner/defendant is guilty of laches right from the beginning. He suffered a decree. Therefore, he filed an Appeal Suit, but with delay. The application to

condone the delay is still pending. Thereafter, he should have participated in the Execution Petition. He permitted the Execution Petition to be ordered exparte. Thereafter, he filed an application to set aside the exparte order with a delay of 119 days.

10. On the basis of the above facts, I find no infirmity in the order passed by the learned Special Officer cum Additional Subordinate Judge, Puducherry. The order is upheld. The present Civil Revision Petition is dismissed. No order as to costs. Consequently, the connected Miscellaneous Petition is closed.

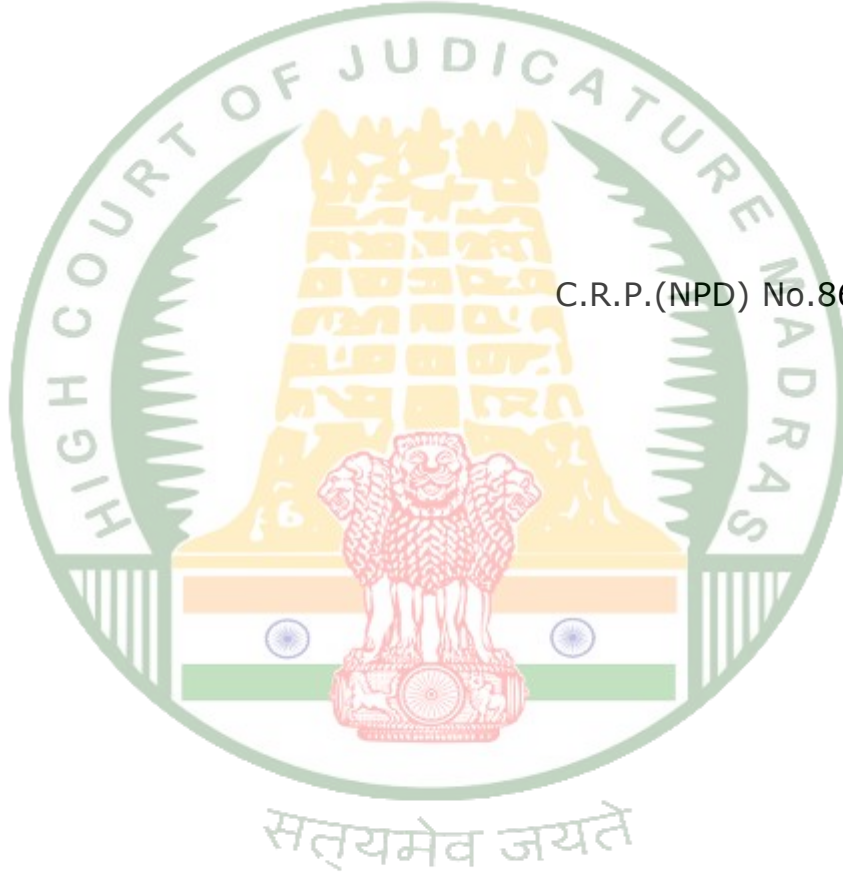
17.04.2021

Internet:Yes/No
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To
The Additional Subordinate Court,
Puducherry.

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C.V.KARTHIKEYAN,J.



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