

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM

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

C.R.P.(NPD) No.1552 of 2016
and C.M.P.No.8412 of 2016

P.Duraisamy ... Petitioner

Vs.

N.Velkamatchi ... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order passed by the learned Subordinate Judge at Mettur, dated 30.04.2014 in I.A.No.10 of 2013 in O.S.No.81 of 2009.

For Petitioner : Mr.P.Valliappan

For Respondent : Mr.P.Mani

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 30.04.2014 passed by the learned Subordinate Judge, Mettur, made in I.A.No.10 of 2013 in O.S.No.81 of 2009, thereby dismissing the petition to condone the delay of 508 days in filing the

petition to set aside the exparte decree.

2. The petitioner is the defendant in the suit filed by the respondent for recovery of money on the strength of pronote. After receipt of the notice, the petitioner engaged counsel and filed written statement. Thereafter, he failed to cross examine P.W.1 as such, he was set exparte and the suit was decreed on 10.06.2011. Thereafter, the respondent filed execution petition in E.P.No.53 of 2011 before the Execution Court. In the execution petition, the petitioner was serviced notice and again he engaged another counsel and also filed this petition to set aside exparte decree with the delay of 508 days. The said petition was dismissed by the trial Court as against which the present Civil Revision Petition.

3. On perusal of records it revealed that the petitioner was already set exparte by the trial Court on 01.04.2010 and on the strength of the exparte decree, the respondent filed execution petition in E.P.No.45 of 2010. On receipt of the notice from the execution petition in E.P.No.45 of 2010, the petitioner filed petition in I.A.No.620 of 2010 to set aside the

exparte decree and the same was allowed by an order dated 22.03.2011 and the suit was posted on 28.04.2011.

4. Thereafter several opportunities were given to the petitioner for cross-examination of P.W.1. Even then, the petitioner failed to cross-examine P.W.1. Therefore again the petitioner was set exparte and exparte decree was passed on 10.06.2011. On the strength of the exparte decree, the respondent filed execution petition in E.P.No.53 of 2011, in which the petitioner was served with notice. He engaged counsel and in his presence the order of salary attachment was passed on 30.10.2012. Thereafter, the petitioner filed this present petition to condone the delay of 508 days in filing the petition to set aside exparte decree.

5. Therefore, the petitioner did not approach this Court with clean hands and he wantonly failed to appear before the trial Court and hence the exparte decree was passed. The trial Court rightly dismissed the petition filed by the petitioner and this Court finds no illegality or infirmity in the order passed by the Court below.

6. Accordingly, the Civil Revision Petition stands dismissed.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11.02.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

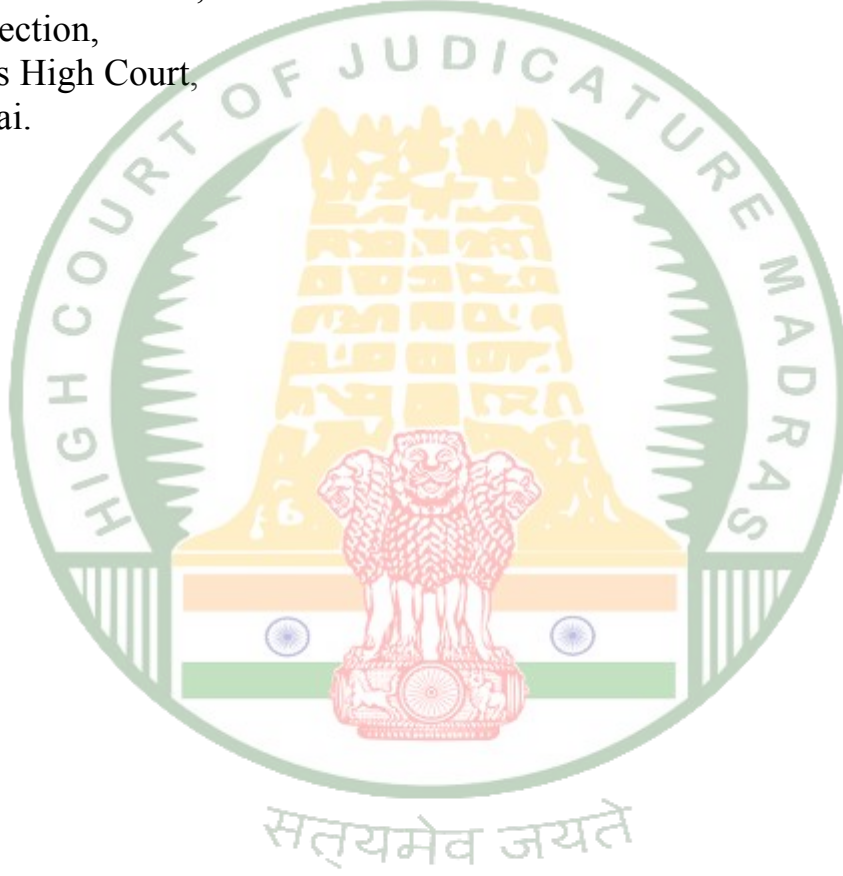
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To

1. The Subordinate Judge,
Mettur.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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C.R.P.(NPD)No.1552 of 2016

G.K.ILANTHIRAIYAN, J.

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