

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.866 of 2021

and

C.M.P.No.7122 of 2021

Mumtaj

..

Petitioner/Petitioner/Defendant

Vs

Ganesh Anand

..

Respondent/Respondent/Plaintiff

Civil Revision Petition filed under Article 227 of Constitution of India, against the order in I.A.No.1 of 2019 in O.S.No.130 of 2015 on the file of Additional District Judge, (Fast Track Court) Villupuram dated 14.03.2020.

For Petitioner

..

Ms.Shobana Ramasubramanian

For Respondent

..

No appearance

ORDER

The Revision Petition has been filed by the defendant in O.S.No.130 of 2015 questioning the order in I.A.No.1 of 2019.

2.It is seen that the suit had been filed seeking specific performance and an alternate relief had also been prayed seeking return of the advance amount in case the Court determined that specific performance cannot be granted whatsoever.

3.The petitioner herein as defendant also filed written statement. Thereafter, a decree had been passed in favour of the plaintiff. Thereafter, the plaintiff filed E.P.No.11 of 2019. The present petitioner herein then filed I.A.No.1 of 2019 seeking, to condone the delay of 615 days in filing application under Order IX Rule 13 of CPC. The said application came up for consideration before the learned Additional District Judge, Fast Track Court, Villupuram on 14.03.2020. The order passed therein is under question in the present Civil Revision Petition.

4.While examining the said Interlocutory Application, permission had been granted to both the present petitioner and the respondent / plaintiff to let in evidence. The petitioner/ defendant examined herself as PW-1 and the respondent / plaintiff examined himself as RW-1. The present petitioner had not filed any documents to substantiate reasons given to condone the delay 615 days.

5.It has been very specifically stated by the learned Judge that even the reason that the petitioner suffered from illness cannot be believed because that fact had not been established by producing medical records. The petitioner, for reasons best known to herself had not substantiate the reasons advanced by producing necessary documents. Therefore, having no other alternate the oral evidence of the petitioner had been rejected and the application had been dismissed.

6.This Revision Petition has been filed as against the said order. The learned counsel who appears for the Revision Petitioner, however stated very strangely that the respondent / plaintiff would be very much satisfied in ensuing that a decree with respect to the alternate relief is granted. The alternate relief is for return of the advance of

Rs.9,00,000/-. The learned counsel also stated that for the petitioner / defendant would also submit to a decree, but put a caveat stating that it would only be with respect to the alternate relief.

7.I am not prepared to accept such statement. In fact, the learned counsel's statement on behalf of the respondent / plaintiff goes far beyond the authority given to the learned counsel. The learned counsel may only state as to what her client had instructed. The submission stating that the petitioner herein would submit to the alternate relief cannot be taken into consideration by this Court. It is only for the respondent / plaintiff to either agree to that or to disagree to that. The Court cannot express any opinion.

8.The Execution Petition is pending and the same statement can be made before the Executive Court and I am confident, if any such statement is made that the petitioner herein is prepared to submit a decree, it would be taken note of the learned Judge while deciding the Execution Petition. So far as the delay is concerned, unfortunately since documents had not been produced, it is clear that there are no documents to substantiate the claim.

9. In view of the above reasonings, I hold that the order the learned Judge cannot be interfered with. Hence, the Civil Revision Petition is dismissed. No order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

17.04.2021

Internet: Yes/No
Index: Yes/No
smv

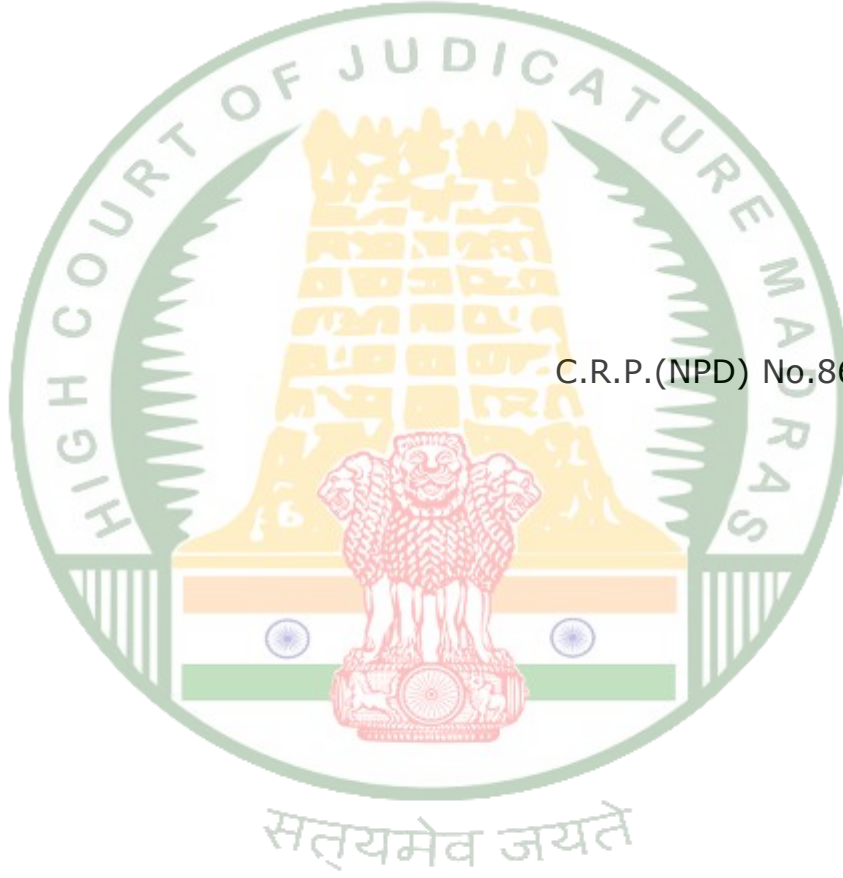
To
The Additional District (Fast Track Court),
Villupuram.



WEB COPY

C.V.KARTHIKEYAN,J.

smv



C.R.P.(NPD) No.866 of 2021

WEB COPY

17.04.2021