

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2021

CORAM

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

CRP.NPD.No. 2148 of 2016

and

CMP.No.11209 of 2016

M.Nagarajan

... Petitioner

Vs.

Prakasam

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order passed in E.A.No.195 of 2015 in E.P.No.12 of 2014 in O.S.No.114 of 2008 by its fair and decretal order dated 27.01.2016 passed by the Additional District Munsif Vaniyambadi.

For Petitioner : Mr. B.Madhana for
Mr. P.Chandrasekar

For Respondent : Mr. PA.Sudesh Kumar

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in in E.A.No.195 of 2015 in E.P.No.12 of 2014 in O.S.No.114

of 2008 dated 27.01.2016 on the file of the Additional District Munsif Vaniyambadi, thereby, dismissing the petition to condone the delay in filing the petition to set aside the ex-parte order in execution proceedings.

2. The petitioner is the judgement debtor and defendant in the suit filed by the respondent herein for specific performance. The suit was filed in the year 2008 and after receipt of the notice, the petitioner failed to appear before the trial Court and as such, he was set ex-parte. The suit was decreed by the judgement dated 20.06.2012. In the year 2014, the respondent filed a execution petition in E.P.No.12 of 2014. The decree obtained by him was executed by executing the sale deed in his favour, when the execution petition was pending for effecting delivery of possession, in respect of the subject property.

3. The petitioner filed a petition to condone the delay in filing the petition for setting aside the ex-parte order passed in E.P.No.12 of 2014. Section 5 of the Limitation Act is very clear that other than an application under any of the provision of Order 21 of the Code of Civil Procedure, it may be admitted after the prescribed period. Admittedly, the petition to

condone the delay filed in the execution proceedings is preferred under Order 21 of the Civil Procedure Code. Therefore, the petition to condone the delay itself is not maintainable.

4. That apart, the trial Court recorded the reason for dismissing the said application that in the affidavit filed in support of the condone the delay petition, the petitioner stated that from 14.09.2014 onwards, he suffered Jaundice and therefore, he could not instruct the counsel. Therefore, in the main suit itself, he was set ex-parte, and against him, ex-parte decree was passed. Therefore, the reason stated in the application is not sufficient to condone the delay of 434 days in filing the petition to set aside the ex-parte order passed in execution proceedings. The condone delay petition itself is not maintainable in the execution proceedings.

5. Therefore, this petition is devoid of merits. Accordingly, this Civil Revision Petition is dismissed. However, the suit is of the year 2008 and effecting the delivery of possession is pending for several years. Considering the same, the trial Court is directed to complete the execution proceedings within a period of two months from the date of receipt of a

copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

11.01.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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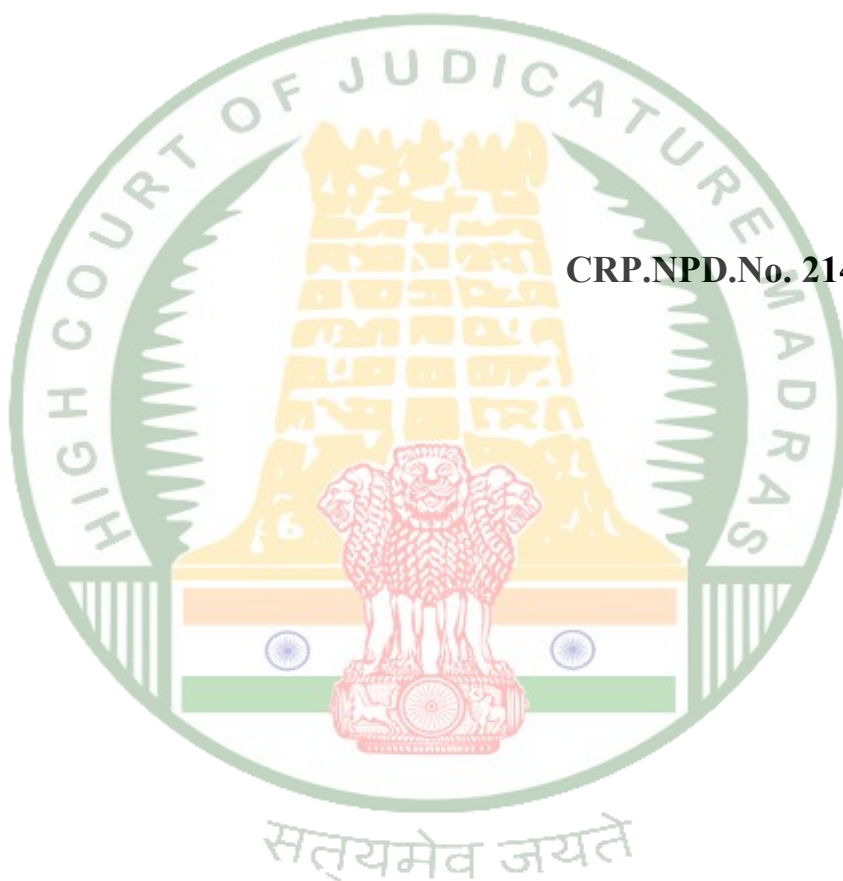
The Additional District Munsif Vaniyambadi.



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G.K.ILANTHIRAIYAN,J.

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