

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2021

CORAM

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

CRP.NPD.No.2468 of 2016
and CMP.No.12841 of 2016

S.Susheeladevi

..Petitioner

Vs.

S.Sudha

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC against the order passed in IA.No.114 of 2013 in IA.No.409 of 2012 in Unnumbered Appeal on the file of the Principal District Judge, Erode dated 17.06.2013.

For Petitioner : Mr.S.Parthasarathy,
Senior Counsel
for Mr.P.Dinesh Kumar
For Respondent : Mr.R.Bharanidharan
for Mr.R.Karthikeyan

ORDER

The present civil revision petition is directed as against the order passed in IA.No.114 of 2013 in IA.No.409 of 2012 in Unnumbered Appeal on the file of the Principal District Judge, Erode dated 17.06.2013 thereby dismissing the petition to restore the condone delay petition.

2. The petitioner is the defendant in the suit filed by the respondent for specific performance on the strength of the agreement for sale dated 05.02.2007.

3. Mr.S.Parthasarathy, Senior Counsel appearing for the petitioner submitted that the suit filed by the respondent herein was decreed by the judgment and decree dated 16.12.2010. Aggrieved by the same, the petitioner preferred appeal suit with delay of 371 days in filing the appeal suit in IA.No.409 of 2012. He further submitted that the application was posted on 13.12.2012 for enquiry. Unfortunately the petitioner could not instruct her counsel to proceed with the case since her third daughter gave birth to male child as such she was looking after her needs as well as the new born baby. Therefore, the absence of the petitioner as well as her counsel are neither wanton nor wilful.

4. The petitioner is the defendant in the suit filed for specific performance. The said suit was decreed by the judgment and decree dated 16.12.2010. Aggrieved by the same, the petitioner preferred appeal suit with delay of 371 days in filing the first appeal. When the application

was posted for enquiry, the petitioner's counsel did not appear and as such the same was dismissed for default. Aggrieved by the same, the present petition has been filed to restore the same with condone delay petition and the same was dismissed on the ground that there was no bonafide reason to restore the condone delay petition. Further stated that on the strength of the decree dated 16.12.2010, the respondent filed execution petition in which the petitioner entered her appearance and also filed counter and stated that she already executed sale deed in respect of the suit property in favour of third party as early as on 28.10.2011. Similarly, during the pendency of the suit, she has executed sale deed in respect of one of the house sites on 20.08.2010 itself. The very conduct of the petitioner showing disregard to the decree and judgment and as such there is no reason to condone the delay and dismissed the petition to restore the same. However, the first appellate court may pass order on the condone delay petition if reasons stated in the condone delay petition are not sufficient.

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5. Therefore, the petitioner may be given one more opportunity to deal with the condone delay petition in filing the appeal suit on merits. Accordingly, this civil revision petition is allowed and the order passed in

IA.No.114 of 2013 in IA.No.409 of 2012 in Unnumbered Appeal on the file of the Principal District Judge, Erode dated 17.06.2013 is set aside on condition that the petitioner shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the respondent as cost within a period of two weeks from the date of receipt of copy of this order, failing which the order passed by this Court shall stand automatically cancelled. Consequently, connected miscellaneous petition is closed. No order as to costs.

16.03.2021

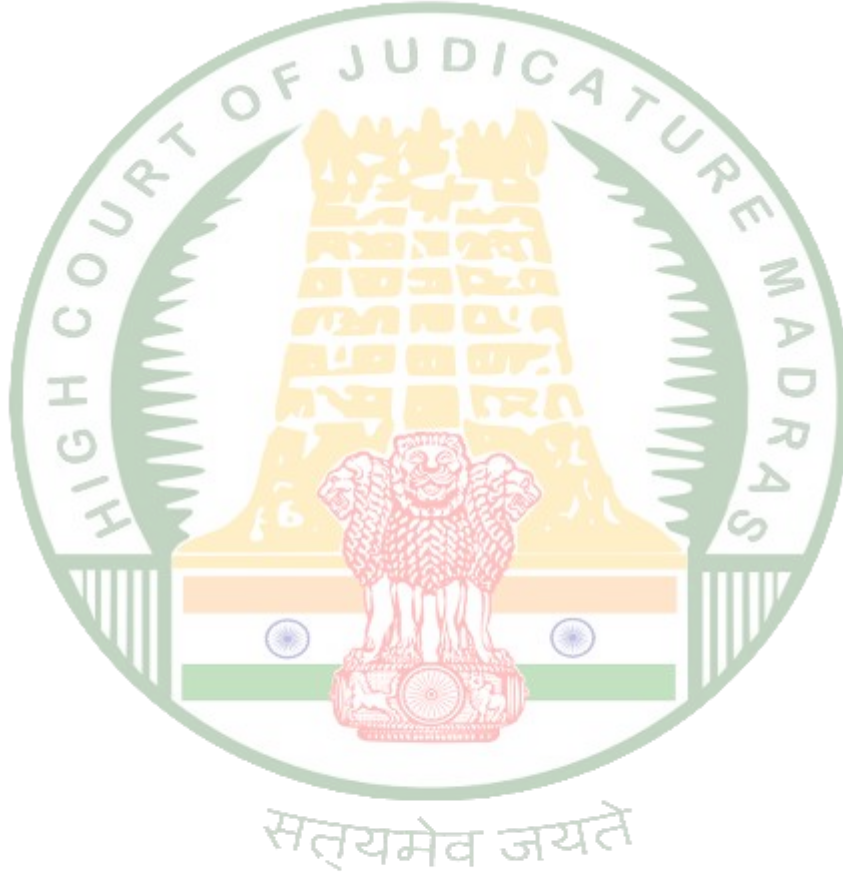
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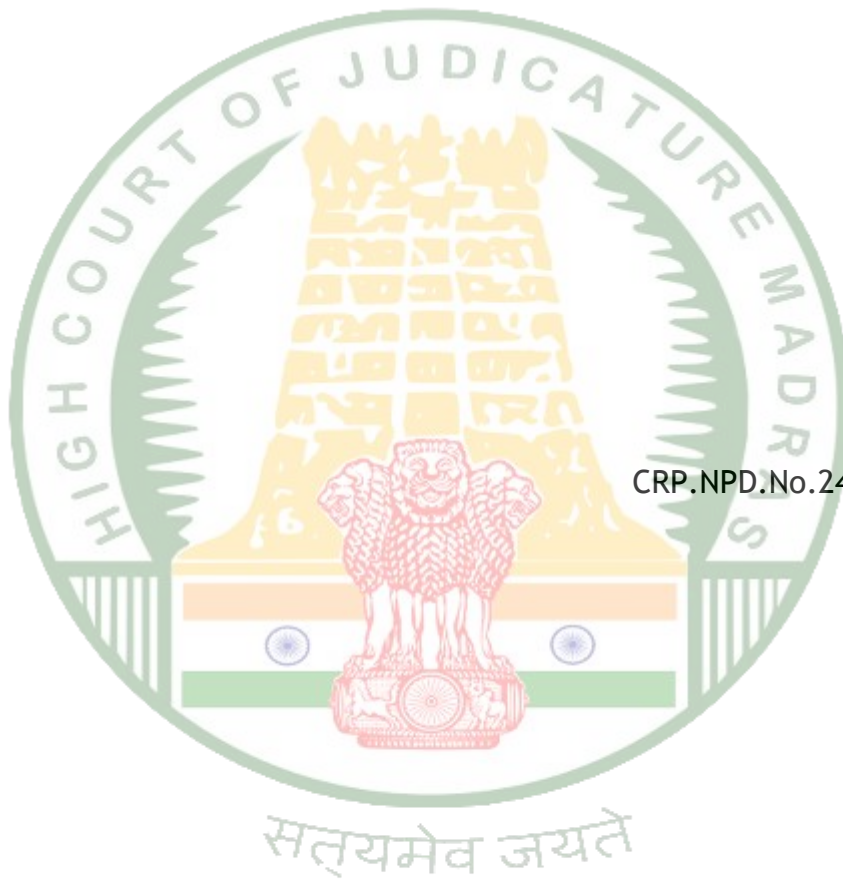
The Principal District Judge,
Erode



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G.K.ILANTHIRAIYAN,J.

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