

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM

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

C.R.P.(NPD) No.2826 of 2016

C.M.P.No.14348 of 2016

K.Gunasekaran Petitioner

Vs.

P.Chinnusamy Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 19.01.2016 made in C.M.A.No.8 of 2016 on the file of the Principal District Court, Salem, confirming the fair and final order dated 24.10.2013 made in I.A.No.533 of 2011 in O.S.No.181 of 2001 on the file of the Subordinate Court, Sankari.

For Petitioner : Mr.D.Sathiya

For Respondent : Mr.V.Lakshminarayana
For M/s.Dass & Viswa Associates

ORDER

The Civil Revision Petition has been filed as against the order dated 19.01.2016 passed by the learned Principal District Judge, Salem in C.M.A.No.8 of 2016, thereby confirming the fair and final order dated 24.10.2013 passed by the learned Subordinate Judge, Sankari, in I.A.No.533 of 2011 in O.S.No.181 of 2001, thereby dismissing the petition to set aside the exparte decree.

2. The petitioner is the defendant in the suit filed by the respondent for specific performance. After filing the written statement, the petitioner failed to cross-examine P.W.1. Therefore, he was set exparte by the exparte decree dated 14.06.2004. Thereafter, the petitioner filed petition in I.A.No.225 of 2005 in O.S.No.181 of 2001 to set aside the exparte decree with the delay of 16 days. The condone delay petition was dismissed by the Court below and aggrieved by the same, the petitioner filed Civil Revision Petition in C.R.P.No.4266 of 2009 before this Court. This Court by an order dated 29.07.2021 allowed the said Civil Revision Petition and directed the Court below to take up the petition to set aside the exparte decree and

dispose the same within a period of four weeks in accordance with law. As directed by this Court, the Court below dismissed the petition to set aside the exparte decree. Aggrieved by the same, the present Civil Revision Petition.

3. The learned counsel appearing for the petitioner submitted that when the petition to condone the delay in filing the petition to set aside exparte decree was allowed, it is only consequential order to be passed and it is automatically set aside the exparte decree. This Court observed that the suit for specific performance decreed exparte could not be allowed to continue without any contest, merely on account of the delay of 16 days. Therefore, he prayed to allow this Civil Revision Petition.

4. Per contra, the learned counsel appearing for the respondent submitted that when the suit was posted for cross-examination of P.W.1, the petitioner failed to cross-examine the respondent on several occasions. Finally, he was set exparte by the Court below. Though this Court allowed the petition to condone the delay in filing the petition to set aside the

exparte order, it would not amount to allow the petition to set aside the exparte order. Hence, he prayed for dismissal of this petition.

4.1. He further submitted that after the exparte decree, the respondent filed execution petition in E.P.No.10 of 2007 and the sale deed was executed in favour of the respondent. In fact, delivery of possession was ordered and the same was also effected on 10.07.2007 and the same was recorded by the execution Court on 28.09.2009 itself. He further submitted that the minor daughters of the petitioner filed suit in O.SNo.124 of 2010 for partition in respect of the very same property that too after effecting the delivery and thereafter the said suit came to be dismissed for default on 02.11.2015. He relied upon the judgment of the Hon'ble Supreme Court of India passed in *Crl.A.No.1908 of 2016* dated 29.02.2016 in the case of *Hindustan Steelworks Construction Ltd., Vs. UOI & anr.*

5. Heard Mr.D.Sathiya, learned counsel appearing for the petitioner and Mr.V.Lakshminarayana, learned counsel appearing for the respondent.

6. The petitioner is the defendant in the suit filed by the respondent for specific performance. After filing written statement, he failed to cross examine P.W.1 more than nine occasions and as such he was set exparte by the trial Court and exparte decree was passed on 14.06.2004. With the delay of 16 days, the petitioner filed petition to set aside the exparte decree. The condone delay petition was dismissed and aggrieved by the same, the petitioner filed Civil Revision Petition in CRP.No.4266 of 2011 and the same was allowed by this Court by an order dated 29.07.2011. While allowing the said civil revision petition, this Court observed as follows :-

"10. In the affidavit filed in support of the application for condonation of the delay of 16 days, the petitioner has stated that he suffered from jaundice and that he was taking herbal treatment. As a matter of fact, the petitioner had filed a written statement and it was only at the stage when the case was posted for cross examination that the 16 days and also considering the fact that it is a suit for specific performance, I am of the view that the Court below could have

condoned the delay of imposing some costs. This is also in view of the fact that in the written statement, the petitioner has raised contention issues. Therefore, a suit for specific performance decreed ex parte could be allowed to continue without any contest, merely on account of the delay of 16 days.

11. In view of the above, the revision is allowed, the impugned order is set aside and the condone delay petition in I.A.No.225 of 2005 is allowed, subject to the condition that the petitioner deposits into the Court below, Second Appeal cost of Rs.10,000/- (Rupees ten thousand only), on or before 12.08.2011. The Court below is directed to call the application in 16.08.2011 for verifying whether the petitioner has deposited the costs on or before 12.08.2011. If the petitioner complies with this order, the Court below shall automatically permit the respondent to withdraw the amount without any necessity to file a separate application for payment out. If the petitioner complies with the above conditions, the set aside petition shall be taken up for disposal of in accordance with law, within a period of four

weeks. thereafter, depending upon the outcome, the Court below shall take up the suit and dispose it of within a period of three months. If the petitioner fails to comply with the above condition, the order of the Court below will stand."

Though this Court observed that the suit for specific performance, the decree exparte could be allowed to continue without any contest merely on account of the delay of 16 days, this Court specifically directed the Court below to take up the petition to set aside the exparte decree for disposal and dispose the same in accordance with law within a period of four weeks. Further observed that depending upon the outcome, the Court below shall take up the suit and dispose it within a period of three months. In fact, in the said Civil Revision Petition, the respondent contended that already the delivery was effected and nothing survive in that revision petition. Recording the said objection, this Court passed the above said order.

7. In this regard, the learned counsel appearing for the respondent relied upon the judgment dated 29.02.2016 passed by the Hon'ble Supreme Court of India in ***Crl.A.No.1908 of 2016*** in the case of ***Hindustan***

Steelworks Construction Ltd., Vs. UOI & anr., as follows :-

"3. We find that practically, nothing remained in the matter since the conveyance had already been executed on 24.09.2014. It appears that this fact was not brought to the notice of the High Court. Therefore, as on the date of order passed by the High Court, the said appeal had already been rendered infructuous."

The Hon'ble Supreme Court of India held that conveyance had already been executed and as such after the delivery effected nothing survive in the appeal.

8. That apart, the daughters of the petitioner herein filed suit in O.S.No.124 of 2010 for partition in respect of the very same property. On perusal of the plaint in O.S.No.124 of 2010, the minor daughters filed the suit for partition and they were represented by their natural guardian viz., their mother. It is nothing but set up by the petitioner herein to file the same. However, subsequently the said suit was dismissed for default by the judgment and decree dated 02.11.2015. Therefore, the Court below rightly dismissed the petition to set aside the exparte decree and this Court finds no

illegality or infirmity in the order passed by the Court below.

9. Accordingly, the Civil Revision Petition stand dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

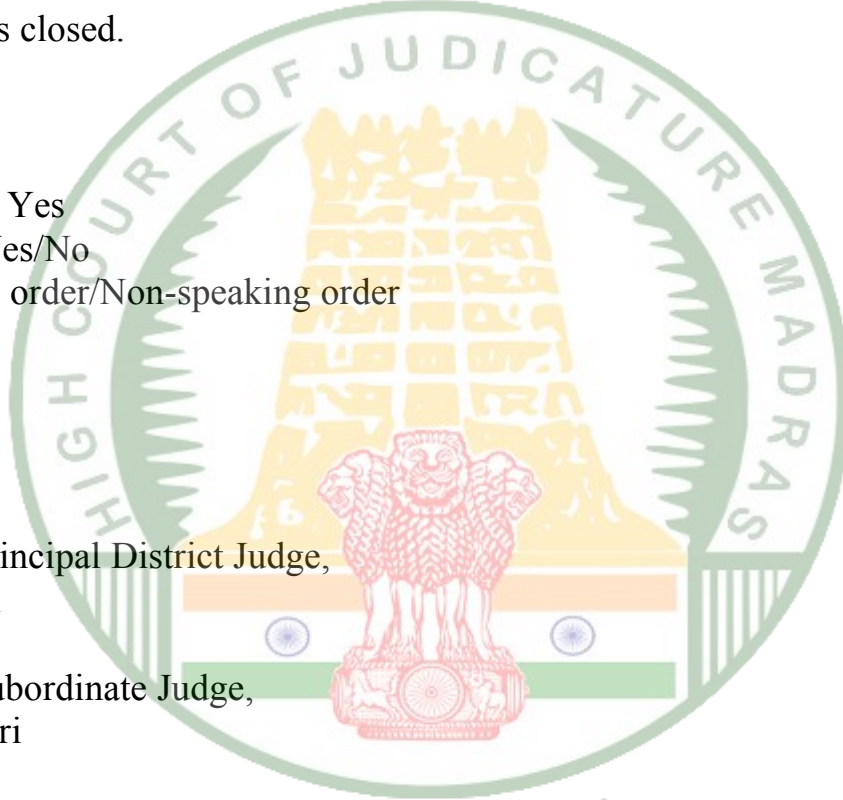
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To

1. The Principal District Judge,
Salem

2. The Subordinate Judge,
Sankari

3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



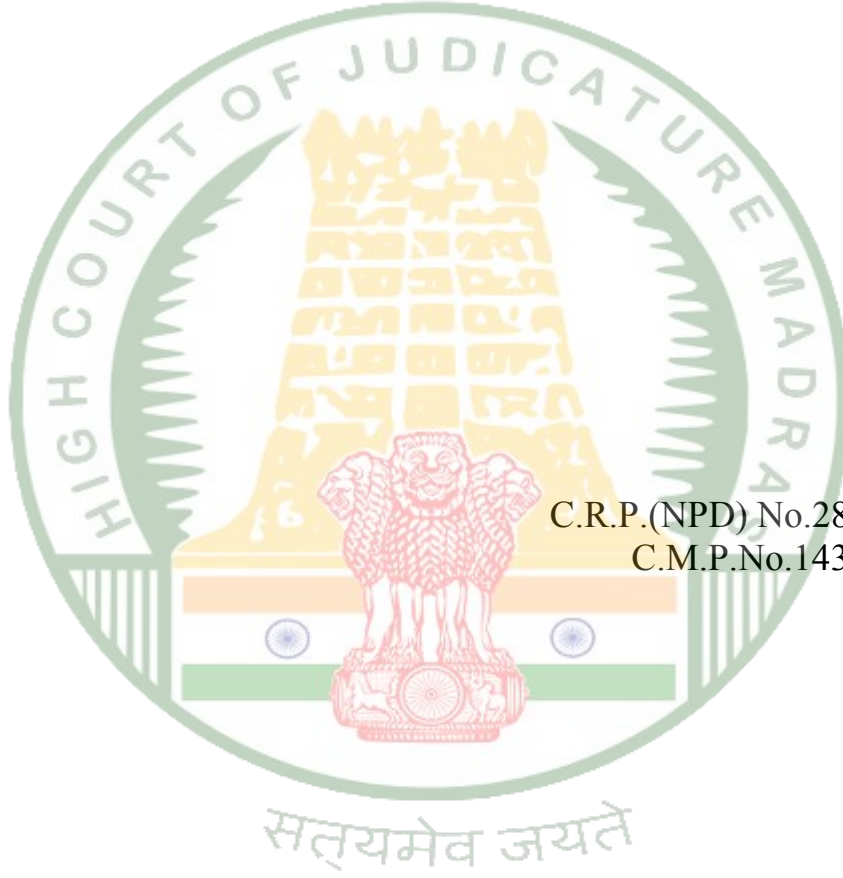
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