

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2021

C O R A M
THE HON'BLE MS. JUSTICE R.N. MANJULA

C.R.P.(NPD) No.3329 of 2016.
and
C.M.P. No.17026 of 2016

M. Mathaiyan Petitioner

Vs.

1. Nirmaladevi
2. Gurumoorthy
3. Chidhambaram ... Respondents

Prayer: This Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the fair and decretal order of the Principal District Munsif Court at Bhavani dated 06.08.2016 in I.A. No.1227 of 2015 in O.S.No.115 of 2011.

For Petitioner ... Mr. Valliappan
For Respondents ... Mr. Lakshmanasamy

ORDER
(Heard through video conferencing)

This Civil Revision Petitions has been filed under Section 115 of the Civil Procedure Code to set aside the fair and decretal order of the Principal District Munsif Court, Bhavani dated 06.08.2016 in I.A.

No.1227 of 2015 in O.S.No.115 of 2011.

2. The petitioner is the plaintiff who has filed the suit in O.S. No.115 of 2011 before the Principal District Munsif, Bhavani seeking for bare injunction. In the said suit the defendants have filed counter claim in which they have claimed declaration and permanent injunction. Subsequently, the petitioner who was plaintiff therein has not pressed the suit. So the counter claim alone was pending before the Trial Court. Since the petitioner/plaintiff did not make his appearance in the counter claim, the Counter claim was allowed and an exparte decree was passed. Subsequently, the petitioner has filed the petition to set aside the ex-parte decree with the delay of 408 days. Another petition was filed to condone the delay of 408 days in filing the petition to set aside the ex-parte decree passed in the counter claim. The Trial Court has dismissed the said petition by not accepting the reasons stated by the plaintiff. This Civil Revision Petition has been filed challenging the said order of dismissal.

3. The learned counsel for the respondents submitted that the petitioner was making his appearance in other suits and proceedings, but

he had deliberately chosen to remain absent for this proceedings. After an inordinate delay he had filed this petition to condone the delay in filing petition to set aside the decree just in order to cause hardship to them. It is a strange situation where the petitioner has not pressed the suit, when the counter claim filed by the defendants was very much alive and pending. In fact, for the counter claim filed by the defendants, the pleadings in the suit would have been the defence of this revision petitioner/ plaintiff. Despite the petitioner knew that in the counter claim the relief of declaration has also been prayed, he had not pressed the suit and remained ex-parte for the counter claim proceedings also.

4. The conduct of the petitioner/plaintiff as he exhibited would show that he had just invited the defendants to Court for involving them in some proceedings and then flown away. Had the petitioner was serious about his case, he would not have allowed the suit dismissed as not pressed and the counter claim decreed exparte. Knowing fully well that counter claim is for the relief of declaration and injunction, he was not prudent enough to participate in the suit and conduct the case without any fault.

5. It is to be noted that while not pressing the suit the petitioner has stated that the matter is settled out of Court. But the learned counsel for the respondents submitted that the plaintiff did not make any negotiation they did not know on what ground such a report was made by the Court. The conduct of the petitioner seems to be unreasonable and I find no reason to interfere with the order of the trial judge in dismissing the petition by recording a finding that the intention of the petitioner is just to drag on the proceedings and to cause hardship to the respondents.

In the result, the Civil Revision Petition is **dismissed** and the order of the Principal District Munsif Court at Bhavani dated 06.08.2016 in I.A. No.1227 of 2015 in O.S.No.115 of 2011, is confirmed. No costs. Consequently, connected miscellaneous petition in C.M.P. No.17026 of 2016 is also closed.

05.07.2021

Lbm

Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No.

To:

The Principal District Munsif Court,
Bhavani

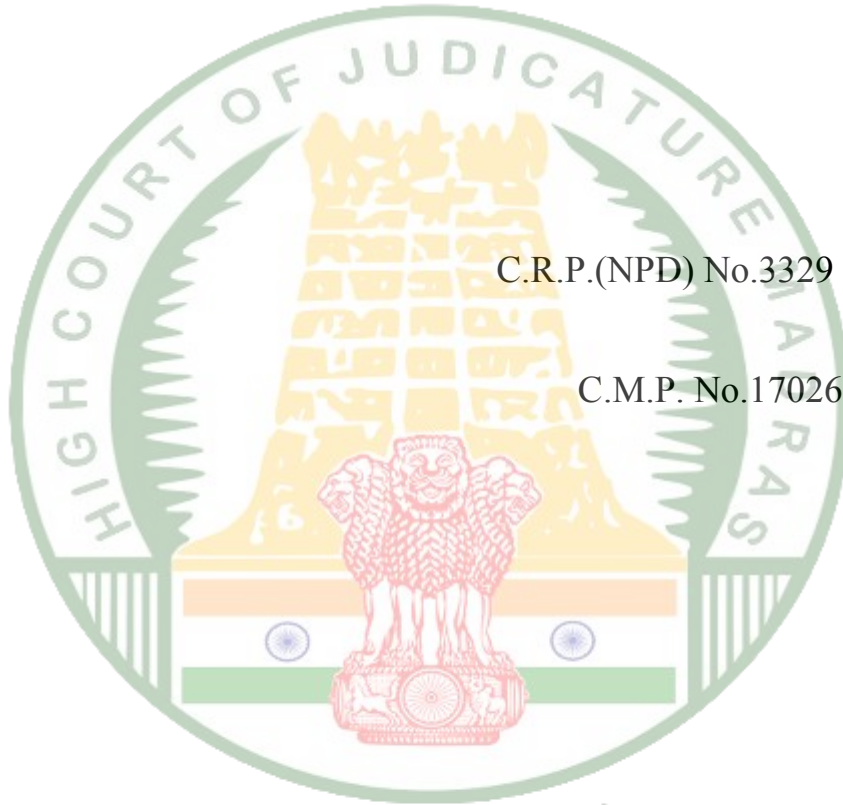


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C.R.P.(NPD) No.3329 of 2016

R.N.MANJULA, J.

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and

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