

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.06.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

CRP [PD] .No.1230/2021
& CMP.No.9556/2021

[Video Conferencing]

1.S.Rajan
2.Mrs.R.Kalaivani

Petitioners /
Plaintiffs

Versus

Mr.V.Panchatcharam

Respondent /
1st Defendant

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India against the decretal order dated 22.07.2020 passed by the learned Principal District Judge, Chengalpattu in IA.No.1/2019 in OS.No.201/2018 filed by the respondent wherein the petition for condoning the delay for 47 days in filing the petition to set aside the exparte order dated 30.04.2019.

For Petitioners : Mr.K.Venkatesan

For Respondent ; No appearance

ORDER

- (1) The revision petition has been filed questioning the order passed in the Docket sheet dated 22.07.2020 in IA.NO.1/2019 in OS.No.201/2018 now pending on the file of the Principal District Court at Chengalpattu.
- (2) OS.No.201/2018 had been filed by the revision petitioners herein seeking a judgment and decree against the defendants to pay a sum of Rs.16,01,660/- together with interest @ 24% per annum and also for cost of the suit.
- (3) A written statement had been filed by the defendants. However, they took a conscious decision, not to participate any further in the judicial proceedings. Therefore, on 30.04.2019, an exparte judgment and decree had been passed against the defendants. This order had been passed after taking into consideration, the documents filed along with the plaint and also after examining the first plaintiff as a witness. Thereafter, the defendants woke up and when the Execution Petition

was filed, they filed IA.No.1/2019 seeking to condone the delay of 47 days in filing the application to set aside the exparte decree. A counter was filed on behalf of the revision petitioners/plaintiffs and in the counter, the revision petitioners sought a direction from the Court that the application to condone the delay can be allowed provided a direction is given that the defendants should deposit at least 50% of the decretal amount to Court. In the revision now filed questioning the order dated 22.07.2020, the learned Judge appears to have allowed IA.No.1/2019 on condition to pay a sum of Rs.10,000/- as costs. I am informed that the said amount of Rs.10,000/- was tendered directly by the party and not tendered through the counsel and therefore, the revision petitioners did not receive it.

- (4) The learned counsel for the revision petitioners very fairly stated that he has no grievance in the delay being condoned. But, rather raised an objection that it is extremely unfair that the defendants could be permitted to prolong the suit, particularly, a suit for recovery of money and the delay in deciding, which would only cause loss to the plaintiffs. The defendants' liability to pay interest would also accrue,

if at all the suit is decreed. Therefore, the learned counsel stated that a condition should have been imposed against the defendants to deposit at least 50% of the decretal amount or some reasonable amount towards the decree.

- (5) A judicial order has been passed considering the facts and circumstances, condoning the delay of 47 days in filing the application to set aside the ex parte decree. I am not prepared to interfere with that order. But, I would rather grant liberty to the revision petitioners herein, if they are so advised and if they feel it appropriate and necessary, file an Interlocutory Application, calling upon the defendants in the suit to deposit a portion of the claim made by them in Court and thereafter, the learned Principal District Judge, Chengalpattu, can adjudicate the issues. By deposit of such amount, the interest of the revision petitioners would only be made more secure. It would also be an impetus to the respondents/defendants to participate in the judicial proceedings with diligence and not attempt to protract the trial proceedings. If the plaintiffs are so advised, they may file necessary application in that regard and if such application is

filed I am confident that the learned Judge would take it up in its true spirit and pass appropriate orders.

- (6) Insofar as the cost amount of Rs.10,000/- is concerned, there shall be a direction permitting the defendants/respondents to deposit the same to the credit of OS.No.201/2018 and later, at the time of passing final judgment, the learned Judge may pass suitable orders with respect to the same. Since the written statement has been filed, the learned Judge may, depending upon the pendency of the cases in the Court, take up the matter, post it for special list and proceed with the trial of the suit.
- (7) With the above observations, the Civil Revision Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

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30.06.2021

AP
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To

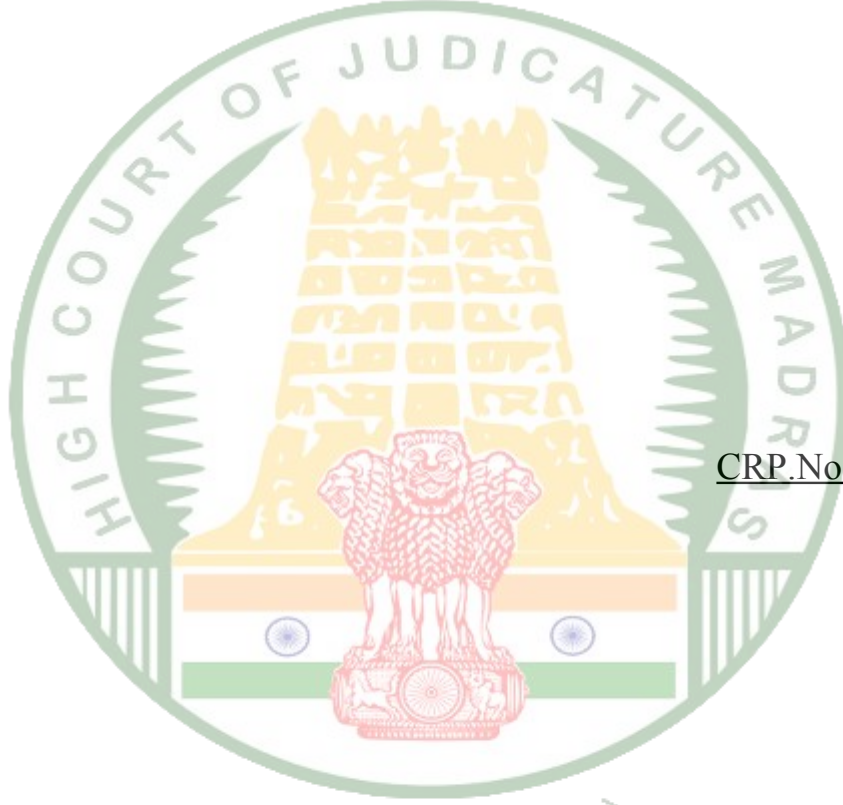
The Principal District Judge,
Chengalpattu.

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C.V.KARTHIKEYAN, J.,

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