

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.968 of 2016

and C.M.P.No.5436 of 2016

Panaya Vasudevan ... Petitioner/Respondent/Plaintiff

Vs.

Virusa Murugesan ... Respondent/Petitioner/Defendant

PRAYER: The Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decreetal order dated 03.02.2016 made in I.A.No.1132 of 2014 in O.S.No.283 of 2013 on the file of the learned Sub Court, Namakkal.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.S.Varanesh

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed praying to set aside the fair and decreetal order dated 03.02.2016 passed in I.A.No.1132 of 2014 in O.S.No.283 of 2013 by the learned Subordinate Judge, Namakkal.

2. The Civil Revision Petitioner is the plaintiff in the suit. The suit has been filed for the relief of specific performance. Since the respondent/defendant remained *exparte*, the suit has been decreed *exparte* on 29.01.2014. After causing a delay of 191 days in filing the petition to set aside the *exparte* order, the respondent/defendant has filed I.A.No.1132 of 2014 to condone the delay in filing the petition to set aside the *exparte* decree. The learned Trial Judge has chosen to show lenience and allowed the petition and condoned the delay. Aggrieved over that, the Civil Revision Petitioner/Plaintiff has filed this Civil Revision Petition.

3. The learned counsel for the Civil Revision Petitioner would submit that the learned Trial Judge has not appreciated the materials in a proper manner and showed undue sympathy for the respondent/defendant. He has further submitted that even while deposing evidence in Section 5 Application, the respondent/defendant has denied his own evidence in the affidavit filed by him when it was shown to him.

4. According to the learned counsel for the Civil Revision Petitioner, the intention of the respondent/defendant in filing the petition to condone the delay is just to protract the proceeding and thereby cause harassment to the Civil Revision Petitioner, who has deposited the sale amount immediately after the *ex parte* decree was passed.

5. The learned counsel for the respondent/defendant would submit that the suit summon was not served to his correct address and only because of that, he could not know about the pending suit and that his absence was not intentional.

6. It is clarified by the learned counsels that the respondent/defendant was set *ex parte* without entering appearance in the suit proceedings right from the inception. The Trial Court has just condoned the delay in filing the petition to set aside the *ex parte* decree. Just because the delay was condoned, it would not imply in any way that the defendant would get a successful order in his petition to set aside the *ex parte* decree also. Being the petitioner in the said petition also, he has got a duty to prove before the Court that he had a

genuine reason for not making appearance and he did not indulge any delay making tactics by evading summons. These facts can be appreciated by the Trial Court only if the petition to set aside the *exparte* decree is taken on file and decided on merits. Even if the delay is condoned, the Civil Revision Petitioner/Plaintiff will not lose his opportunity to contest the petition to set aside the *exparte* decree.

7. So, without standing much on the technicalities, the proceedings should be allowed to be continued. It is submitted by the learned counsel for the Civil Revision Petitioner that considering the hardship suffered by the revision petitioner/plaintiff, cost may be enhanced and his submission is considered.

8. This Civil Revision Petition is disposed by modifying the order of the Lower Court by imposing an additional cost of Rs.1,500/-, which is liable to be deposited by the respondent/defendant within two weeks from the date of receipt of a copy of this order, failing which I.A.No.1132 of 2014 in O.S.No.283 of 2013 will stand dismissed. The proof for deposit shall be produced before the Trial Court immediately after the deposit is made.

Thereafter, the Trial Court shall take up the petition to set aside the exparte decree and dispose it within 4 weeks. Connected civil miscellaneous petition in C.M.P.No.5436 of 2016 is closed. The cost thus deposited in Court is payable to the petitioner/plaintiff on application.

23.04.2021

Speaking/Non-speaking
Index : Yes/No
Internet : Yes/No

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Note : Issue Order Copy on 26.04.2021

To

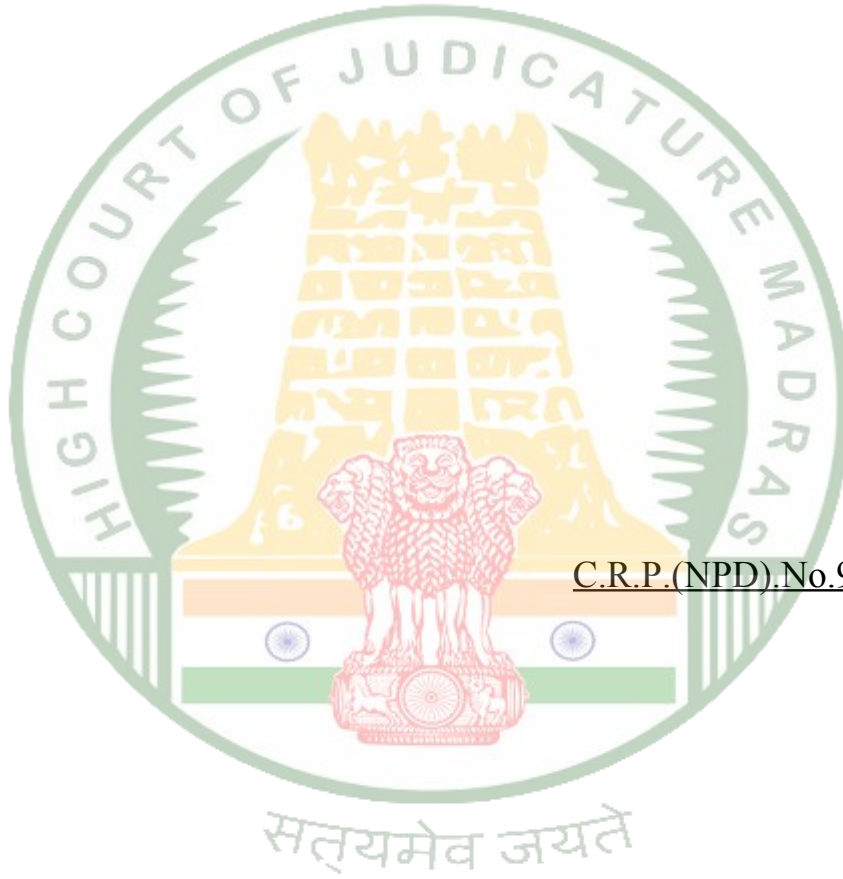
- 1.The Sub Court,
Namakkal.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.



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R.N.MANJULA,J.

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