

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2021

CORAM

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

CRP (NPD) No.2820 of 2018
and
CMP No.16486 of 2018

Mohamed Ali Miyan Petitioner

Vs

M/s.Ameerunissa Begum Sahiba Endowment,
Rep by its President,
No.76, Pycrofts Road,
Bharathi Salai,
Triplicane, Chennai – 600 005. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 14.03.2017 made in I.A.No.6977 of 2016 in O.S.No.3408 of 2008 on the file of the I Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.Durairaj Sreenivasan
For Respondent : Mr.N.A.Nissar Ahmed

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 14.03.2017 made in I.A.No.6977 of 2016 in O.S.No.3408 of

2008 on the file of the I Assistant Judge, City Civil Court, Chennai, thereby dismissing the petition to condone the delay in filing the petition to set aside the ex-parte decree.

2. The revision petitioner is the fifth defendant and the respondent is the plaintiff. The respondent filed a suit in O.S.No.3408 of 2008 for ejectment in respect of the suit property. According to the respondent, a Plot ad-measuring 1090 sq.ft bearing Door No.18, New No.2, Abdul Khadar Street, Mount Road, Chennai-600 002 was leased out to petitioner's father. Thereafter, he put up construction and the monthly rent was fixed for the land at Rs.202/- from January 2007 onwards. Even till today, no rent was paid by the petitioner's father, the petitioner and his brothers. Therefore, the respondent filed a suit for ejectment and in the suit, the petitioner and his brothers were duly served notice. On receipt of the summons, they filed a written statement and the suit was posted for cross-examination of PW.1 and adjourned on various occasions for cross-examination. Even then, the petitioner failed to cross-examine the PW.1, though sufficient time was given to the petitioner. Therefore, they were set ex-parte and ex-parte decree was passed on 07.08.2009.

3. On the strength of the decree, the respondent filed an Execution Petition in E.P.No.2091 of 2010. Though, the summons served to the petitioner and his brothers and thereafter, the Execution Petition was dismissed for default on 17.09.2013. Therefore, the respondent filed a fresh Execution Petition in E.P.No.3543 of 2015. In the said Execution Petition also the petitioner and his brothers were duly served notice and remained ex-parte. Therefore, the delivery of possession has been ordered on 20.04.2016. Thereafter, the petitioner alone, who is being the fifth defendant in the suit, filed a petition to set aside the ex-parte decree with a delay of 2297 days.

4. A perusal of the affidavit filed in support of the condone delay petition reveals that the President of an association by name “House Owners Association” is effectively defending those cases were filed by the respondent herein. Therefore, the petitioner reposed faith in the said association and filed written statement for defending the suit. Thereafter, they failed to cross-examine P.W.1 and as such the petitioner and other defendants were set ex-parte. The said application has been filed immediately after collection of certain material particulars and facts related to the suit. Therefore, there was a delay of 2297 days.

5. Admittedly, the petitioner did not pay any rent from 2007 till even today. When the suit was posted for cross-examination of P.W.1 and the petitioner was given several opportunities to cross-examine the P.W.1 the petitioner did not cross-examine the P.W.1. Therefore, he was set ex-parte and ex-parte decree was passed on 07.08.2009.

6. As stated supra, the petitioner did not whisper about the sufficient cause for enormous delay of 2297 days in filing the petition to set aside the ex-parte decree. In fact, in the condone delay petition, the petitioner failed to cross-examine anybody and also did not mark any witness. Whereas, the respondent marked Exs.R1 to R4. Therefore, the petitioner failed to explain the cause of huge delay in filing the petition to set aside the ex-parte decree. Hence, the Court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

16.07.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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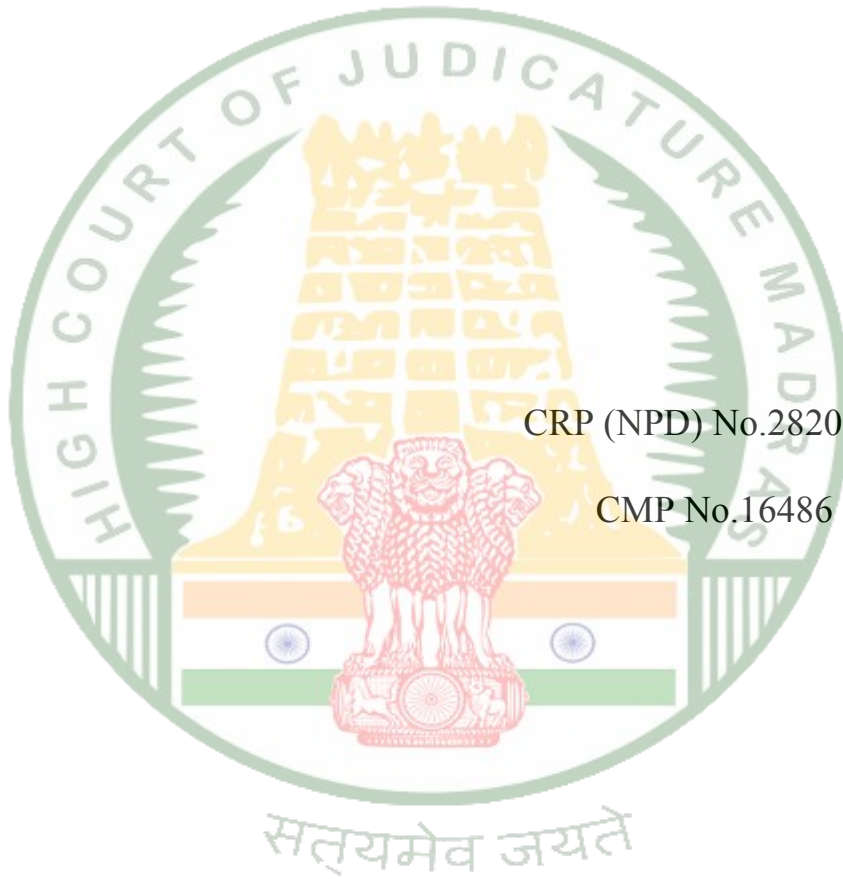
The I Assistant Judge,
City Civil Court,
Chennai.



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G.K.ILANTHIRAIYAN,J.

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