

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

CORAM

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

C.R.P.(NPD) No.1396 of 2014
and M.P.No.1 of 2014

J.Jothi ... Petitioner

Vs.

B.Udayakumar ... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 24.02.2014 made in I.A.No.655 of 2013 in O.S.No.331 of 2010 on the file of the learned Principal District Munsif, Cuddalore.

For Petitioner : Mr.D.Ravichander

For Respondent : Mr.N.Suresh

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order dated 24.02.2014 passed by the learned Principal District Munsif, Cuddalore in I.A.No.655 of 2013 in O.S.No.331 of 2010, thereby allowing the petition filed by the respondent to condone the delay of 944

days in filing the petition to set aside the exparte decree dated 01.02.2011.

2. The petitioner is the plaintiff. She filed suit for declaration and injunction in respect of the suit property as against the respondent herein. After receipt of the notice, the respondent failed to appear before the trial Court and failed to file written statement in the suit. Therefore, the trial Court set him as exparte and passed exparte judgment and decree on 01.02.2011. Thereafter the petitioner initiated execution proceeding in E.P.No.192 of 2011 to execute the judgment and decree passed in her favour. Upon receipt of the notice in the execution proceedings, the respondent appeared and also filed counter on 23.12.2012. Even then the respondent failed to file any petition to set aside the exparte decree. After the period of one year seven months on 04.09.2013, the respondent filed petition in I.A.No.655 of 2013 to set aside the exparte decree dated 01.02.2011 with delay of 944 days in filing the said petition. The trial Court allowed the said petition as against which, the petitioner filed this present Civil Revision Petition.

3. On perusal of the affidavit filed in support of the condone

delay petition, it revealed that the respondent engaged counsel to appear on behalf of him to defend the suit. But he received notice in the execution petition on 19.09.2011. Only thereafter he came to know that he was set exparte in the suit. Thereafter he could not be able to contact his erstwhile counsel since, he fell ill of jaundice from January 2011 to June 2011. Even after recovery, he felt sever pain in his stomach and he was advised to take complete rest with dietic food. Therefore there was a delay in filing the petition to set aside the exparte decree.

4. The learned counsel appearing for the respondent cited the judgment reported in **(2019) 7 SCC 359** in the case of **Robin Thapa vs Rohit Dora**, in which our Hon'ble Supreme Court of India held as follows:-

"7. Most importantly, the learned Counsel submits that after levying execution of the decree, the property has been conveyed to the respondent by the orders of the Court. In other words, sale deed has already been executed in her favour. It is respondent's case that appellant was served notice by the executing court. There is no scope for interfering with the matter by this Court.

8. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

9. The disputed agreement is dated 18.04.2012. Summons was issued and it was received but according to the appellant, by his mother. The Trial Court has apparently accepted the case of the appellant that the mother did not bring the receipt of the summons to the notice of the appellant and that it was sometime in June, 2014 that the appellant can be credited with knowledge of the Suit. The Order dated 02.07.2014 reads as follows:

“On behalf of the plaintiff ex-parte evidence by way of affidavit (20A2) is filed. The ex-parte proceeding against the defendant is allowed. The application is submitted to engage an advocate by the defendant. However, the suit is declared ex-parte evidence, therefore, the same is rejected.

Now the matter is fixed for ex-parte argument on dated 08.08.2014.”

5. The Hon'ble Supreme Court of India held that the litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. But in the above case, the appellant received notice in the execution proceeding on 27.03.2015 and thereafter he came to know about the ex-parte decree only on 17.11.2015. Whereas in the present case, the respondent received notice in the execution proceeding and also filed counter. Thereafter, that too after the period of one year seven months, he filed petition to condone the delay of 944 days in filing the set aside petition, even without whispering about the filing of counter, in the affidavit filed in support of the condone delay petition. Therefore the above judgment is not applicable to the case on hand.

6. It is also seen that on receipt of notice in the execution petition, the respondent filed detailed counter in E.P.No.192 of 2011 on 23.02.2012. When the respondent is able to file counter in the execution proceedings,

what prevented him to file petition to set aside the exparte order? That apart in the affidavit filed in support of the condone delay petition, nothing whispered about the counter filed in the execution proceeding. Without considering the above facts, the Court below mechanically allowed the petition only to give an opportunity to contest the case. Therefore the order passed by the Court below is perverse and liable to be set aside.

7. Accordingly, the order dated 24.02.2014 passed by the learned Principal District Munsif, Cuddalore in I.A.No.655 of 2013 in O.S.No.331 of 2010 is hereby set aside and the Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

20.01.2021
(2/2)

Internet : Yes

Index : Yes/No

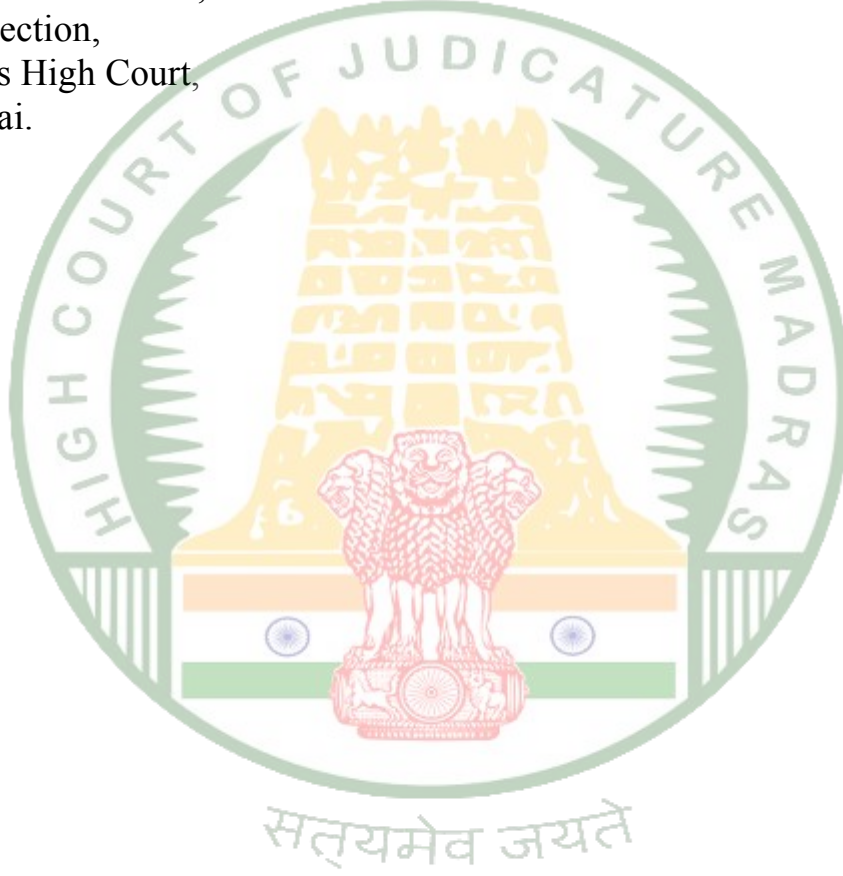
Speaking order/Non-speaking order

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To

1. The Principal District Munsif,
Cuddalore.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

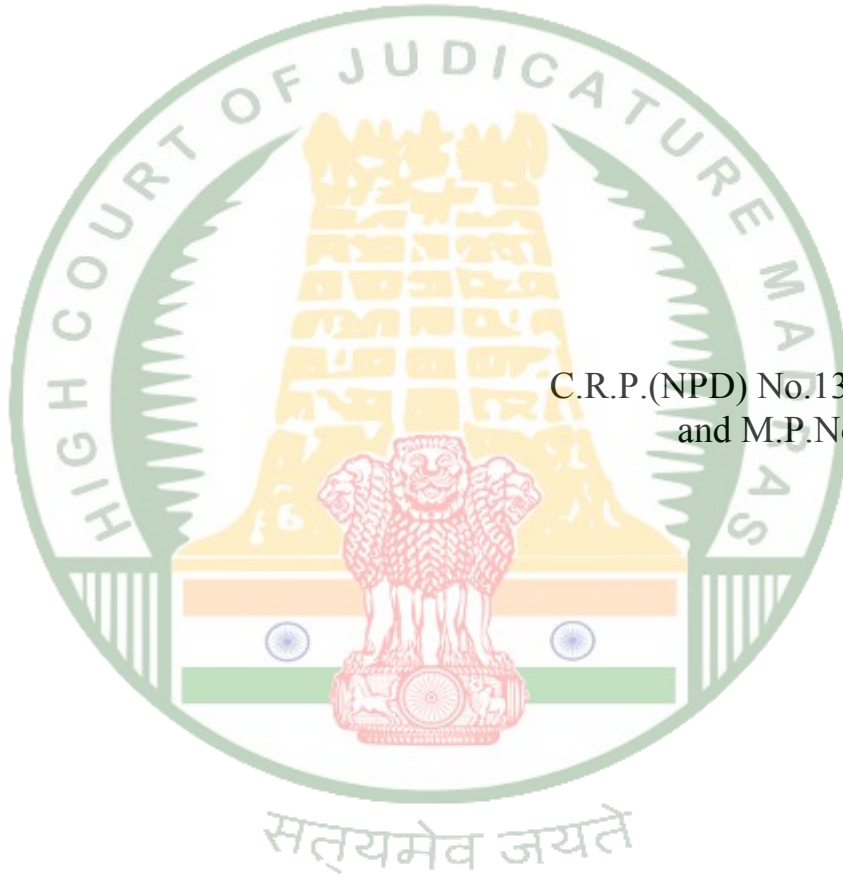


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