

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM

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

C.R.P.(NPD) No.2117 of 2017

C.M.P.No.10094 of 2017

M.Jayachitra

.... Petitioner

Vs.

A.Elumalai

.... Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 06.04.2016 in I.A.No.176 of 2015 in O.S.No.4971 of 2013 on the file of the XIX Additional City Civil Court, Chennai.

For Petitioner : Mr.David Tyagaraj

For Respondent : Mr.M.Aravindan

ORDER

The Civil Revision Petition has been filed as against the order dated 06.04.2016 passed by the learned XIX Additional Judge, City Civil Court, Chennai in I.A.No.176 of 2015 in O.S.No.4971 of 2013, thereby dismissing the petition to condone the delay of 467 days in filing the petition to set aside the order dated 27.06.2014 passed in I.A.No.4 of 2014.

2. The petitioner is the defendant. The respondent is the plaintiff and he filed suit in O.S.No.4971 of 2013 for partition. The petitioner engaged counsel one G.V.Sridharan, and he undertook to file vakalath in the suit on 06.11.2013 and thereafter he did not file any vakalath on behalf of the petitioner. Therefore she was set exparte on 25.11.2013. Immediately she filed an application in I.A.No.4 of 2014 to set aside the exparte decree dated 25.11.2013. In fact, while serving notice to other side viz., the respondent herein, he endorsed no objection to allow the petition to set aside the exparte decree. However, the said application was dismissed for non prosecution on 27.06.2014. In the mean time, the petitioner filed suit in O.S.No.6646 of 2013 on 10.12.2013 on the file of the XVIII Assistant City Civil Court, Chennai, without seeing the order passed in petition to set aside the exparte decree in the present suit. The petitioner filed above suit in respect of the very same property by the same counsel who undertook to file vakalath in the present suit.

3. On the strength of the exparte decree, the respondent filed applications for final decree and for appointment of Advocate Commissioner in I.A.Nos.34 and 35 of 2015. In fact the Advocate Commissioner was appointed and after inspection he also filed report in I.A.Nos.34 and 35 of 2015.

4. On perusal of the affidavit filed in support of the condone delay petition to restore the set aside exparte decree revealed the facts as follows:-

"I submit that I was under the impression that my counsel is following up my case and whenever I am contacting him, he used to say that my case is in progress and he will call me whenever necessity arose for my appearance before this Hon'ble Court. I submit that all of sudden I have received the notice from one K.Seetharaman, Advocate on 28.10.2015. I submit that in that said notice it was stated that the afore stated advocate appointed as Advocate Commissioner for inspecting the suit property. I submit that immediately I rushed to my counsel

and asked him about the status of case and thereafter only I came to know that my counsel failed to follow up the case. Immediately I engaged another counsel and I submit that on 02.11.2015, after verification of 'A' diary of this Hon'ble Court, only I came to know about the above facts.

.....

6. I submit that only on 02.11.2015, I came to know that about the dismissal of I.A.No.4 of 2014. Hence there is delay of 467 days in filing the petition to restore the said I.A.No.4 of 2014 which has been dismissed for default. The delay is neither willful nor wanton, but only due to the reasons stated above."

No reason was assigned by the petitioner for the delay of 467 days. Simply stated that the delay is not willful nor wanton.

5. The present suit is for partition, in which the respondent was allotted half share in the suit property and in the final decree application the Advocate Commissioner was appointed and he also filed report. Therefore, the trial Court rightly dismissed the petition and this Court finds no

illegality or infirmity in the order passed by the Court below. The trial Court viz., XIX Additional Judge, City Civil Court, Chennai, is directed to dispose the final decree application within a period of three months from the date of receipt of a copy of this Order.

6. Accordingly, the Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

25.02.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

To

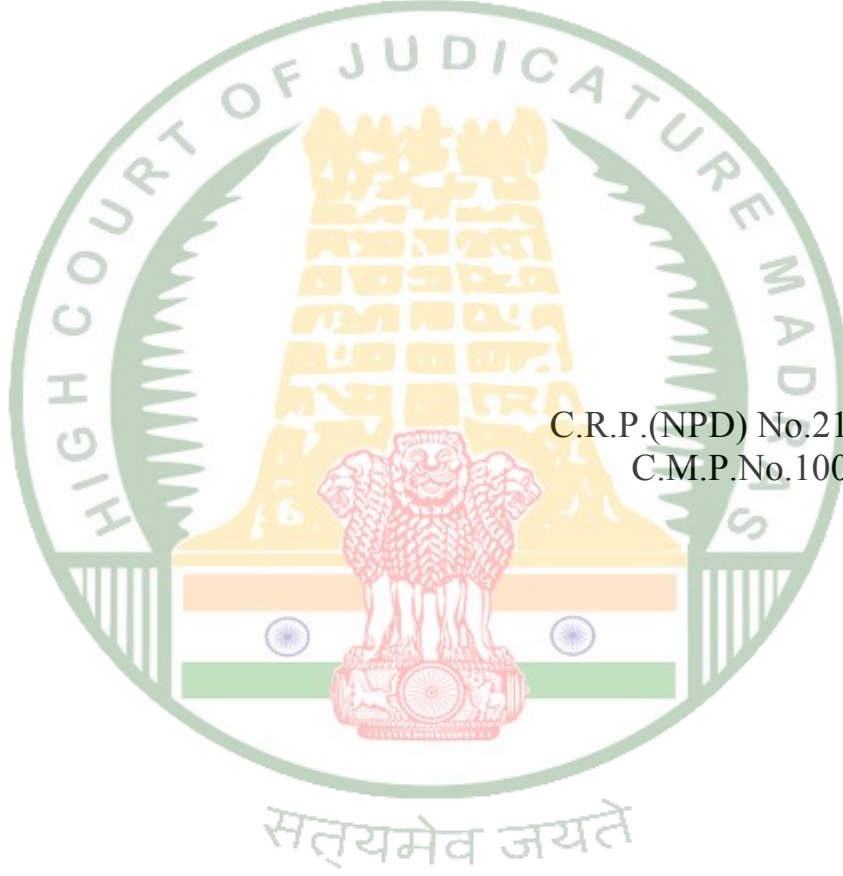
1. The XIX Additional Judge,
City Civil Court,
Chennai.

2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

C.R.P.(NPD)No.2117 of 2017

G.K.ILANTHIRAIYAN, J.

rts



C.R.P.(NPD) No.2117 of 2017
C.M.P.No.10094 of 2017

WEB COPY

25.02.2021