

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2021

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**C.R.P. (NPD) No. 273 of 2017
and
C.M.P. No. 1181 of 2017**

Dhasarathan

... Petitioner

-VS-

Rajeswari

... Respondent

Prayer:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, praying to set aside the order and decretal order dated 04.10.2016 made in I.A. No. 295 of 2014 in O.S. No. 201 of 2007 on the file of the District Munsif Court at Gudiyattam, Vellore District.

For Petitioner : Mr. T.Dhanyakumar

For Respondent : Mr. M.Subash Pandian

ORDER
(through video conference)

The Civil Revision Petition arises out of the order dated 04.10.2016 in I.A. No. 295 of 2014 in O.S. No. 201 of 2007 passed by the District Munsif Court, Gudiyattam (hereinafter referred to as the 'Trial Court' for short). The parties are hereinafter referred to as per their description in the suit in O.S. No. 295 of 2014 before the Trial Court for the sake of clarity and convenience.

2. The suit in O.S. No. 295 of 2014 had been instituted by the Plaintiff for specific performance of the agreement of sale dated 09.07.2004 entered by the Defendant with the Plaintiff for sale of the property described in the plaint therein for a consideration of Rs. 33,000/-. According to the Plaintiff, a sum of Rs. 30,000/- has been received as advance at the time of entering into that agreement, but the Defendant failed to execute the sale deed despite the Plaintiff informed that he was willing to perform his part of the contract along with the balance amount of sale consideration. Though the suit was contested by the Defendant who had filed her Written Statement, she had not appeared at the time of trial and an exparte decree dated 24.09.2012 came to be passed in that suit, and the Defendant filed an application under Rule 13 of Order IX of the Code of Civil Procedure Code, 1908, to set it aside. The application in I.A. No. 295 of 2014 was filed by the Defendant under Section 5 of the Limitation Act, 1963, to condone the delay of 528 days in filing the application for setting aside the exparte decree. The Trial Court by the impugned order condoned the delay on condition that the Defendant shall pay a sum of Rs. 3,000/- as costs to the Plaintiff. Aggrieved thereby, the Plaintiff has filed this Civil Revision Petition.

3. Heard Mr. T.Dhanyakumar, Learned Counsel for the Plaintiff and Mr. Subash Pandian, Learned Counsel for the Defendant and perused the materials placed on record, apart from the pleadings of the parties.

4. Learned Counsel for the Plaintiff contends that the Defendant deliberately did not participate in the trial and with an intent to protract the proceedings did not file the application to set aside the exparte decree in time and the inordinate delay of 528 days ought not to have been condoned by the Trial Court. It is further pointed out that even the costs of Rs. 3,000/- was not remitted and it was only after getting extension of time, it was complied.

5. Learned Counsel for the Defendant, while supporting the impugned order, contends that the suit involves valuable rights of the Defendant in the suit property and the reasons explained by the Defendant having been accepted by the Trial Court, the same does not warrant any interference by this Court.

6. Having regard to the rival submissions, the legal position is unassailable that when there is delay in filing an application to set aside an exparte decree, it is incumbent upon the Applicant to explain the cause of the delay to the satisfaction of the Court whatever be its length and though it may not be

necessary to explain each day of delay, there should not be any lack of *bonafide* on the part of the Applicant. In that backdrop, it requires to be noticed that the Defendant who had filed the affidavit in support of the application to condone the delay in filing the application to set aside the *exparte* decree has stated that due to her ill health, she had left to Bangalore to reside along with her son there and could not attend the trial of the suit on 24.09.2012, which led to the passing of the *exparte* decree and consequential delay of 528 days. The Trial Court has accepted the said explanation and this Court does not find any reason to differ with the same. However, the sum of Rs. 3,000/- awarded as costs is inadequate and it would be appropriate that an additional sum of Rs. 12,000/- is paid by the Defendant to the Plaintiff towards costs as condition for setting aside the *exparte* decree particularly having regard to the subsequent events that the *exparte* decree has been executed and the Plaintiff has incurred expenses for the same. Learned Counsel for the Defendant has filed a memo dated 23.03.2021 agreeing to remit an additional sum of Rs. 12,000/- as costs and has on 31.03.2021 made payment of that amount, the receipt of which has been acknowledged by the Learned Counsel for the Plaintiff in the memo dated 01.04.2021 filed in that regard.

7. In view of the foregoing discussion, the impugned order dated 04.10.2016 in I.A. No. 295 of 2014 in O.S. No. 201 of 2007 passed by the Trial Court condoning the delay of 528 days in filing the application to set aside the exparte decree stands confirmed. The matter shall be listed for passing necessary orders in application to set aside the exparte decree dated 24.09.2012 in O.S. No. 201 of 2007 taking into consideration this order passed. The parties shall appear through their respective Counsel in further proceedings before the Trial Court. After the exparte decree is set aside, recording of evidence in the suit shall be immediately commenced and it shall be ensured that there is atleast one effective hearing every week showing progress of the case. Since it is represented that the Trial Court has already executed sale deed in favour of the Plaintiff in furtherance to the exparte decree dated 24.09.2012 passed in O.S. No. 201 of 2007, the Plaintiff shall immediately return that registered instrument to the Trial Court for safe custody. If the Plaintiff ultimately succeeds in obtaining the decree for specific performance in the suit, the said registered instrument shall be returned to him under written acknowledgment at that stage. In the event of the Trial Court declining to grant any relief of specific performance to the Plaintiff in the suit, necessary steps shall be taken by the Trial Court for cancellation of the sale deed following the procedure prescribed under law. The Trial Court shall expeditiously dispose of the case on

merits in accordance with law and file a report of compliance in that regard before the Registrar (Judicial) of this Court.

In the result, the Civil Revision Petition is disposed with the aforesaid clarifications. Consequently, the connected Miscellaneous Petition is closed. No costs.

vjt

Index: Yes/No

Note: Issue order copy by 08.04.2021.

To

The District Munsif Court,
Gudiyattam.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

01.04.2021

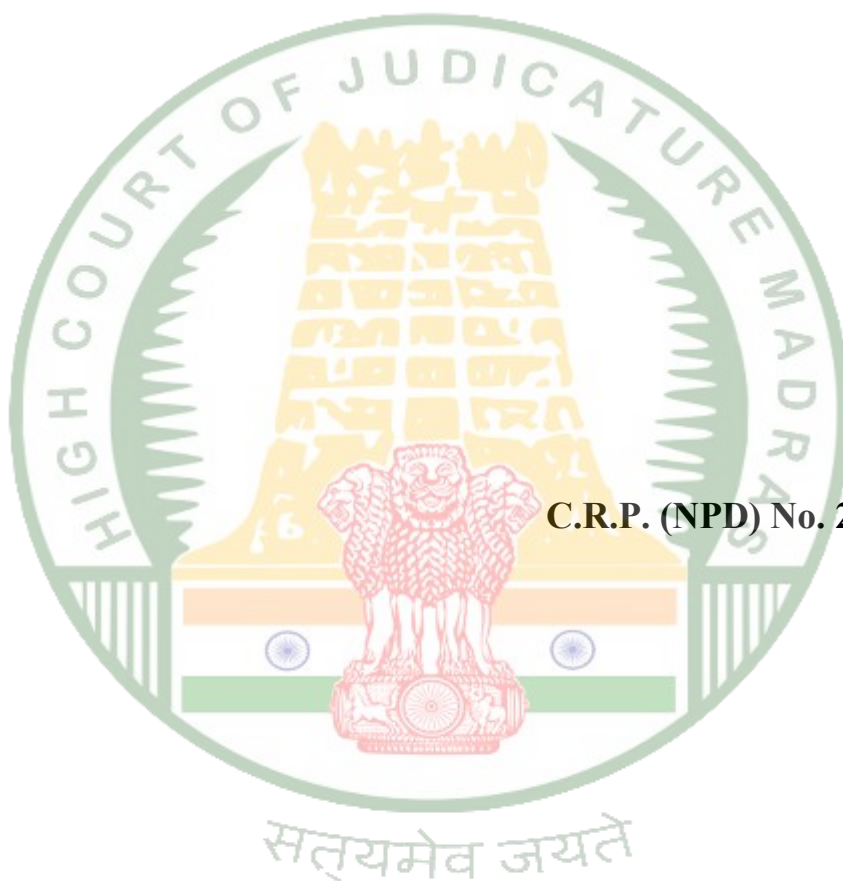


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P.D. AUDIKESAVALU, J.

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