

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(NPD)No.3364 of 2018
and C.M.P.No.19080 of 2018

Ravichandran

...Petitioner

Vs

Dhanasekaran

... Respondent

Prayer Civil Revision Petition filed under Article 227 of the Constitution of India, prayed to set aside the fair and decreetal order dated 22.02.2018 made in I.A.No.462 of 2017 in O.S.No.125 of 2012 on the file of the II District-cum-Sessions Court, Tiruppur.

For Petitioner : Mr.K.Govi Ganesan
For Respondent : Mr.N.Manokaran

ORDER

This Civil Revision Petition has been filed challenging the order dated 22.02.2018 made in I.A.No.462 of 2017 in O.S.No.125 of 2012 on the file of the II District-cum-Sessions Court, Tiruppur.

2.The suit has been filed by the respondent herein for specific performance. The Revision Petitioner is the defendant in the suit and he is the owner of the property.

3.Mr.K.Govi Ganesan, learned counsel for the Revision Petitioner submitted that the above suit was filed by the respondent for specific performance of an un-registered agreement dated 24.04.2010. The suit was filed on 21.08.2012. The Revision Petitioner filed the written statement immediately on 28.01.2013. Thereafter, there was some negotiation in the year 2014 and as per the oral settlement arrived among the parties, the respondent/plaintiff agreed to withdraw the suit. Therefore, the petitioner was not participated in the suit proceedings and also not given any instruction to his counsel.

4. In such circumstances, the Revision Petitioner received the letter from the respondent's counsel on 07.02.2017 stating that E.P.No.1 of 2017 in O.S.No.125 of 2012 has been filed to execute the sale deed and the same was coming up for hearing on 16.02.2017. It was really a shocking news for the

Revision Petitioner, therefore, he approached the Court below and filed an application to condone the delay of 943 days in filing application to set aside the exparte decree dated 13.06.2014, stating that the delay was due to the reason of settlement arrived in the year 2014. Contrary to the settlement arrived between the parties, the respondent/plaintiff failed to withdraw the suit. But, the petitioner was on the impression that the suit was withdrawn by the respondent, that is the reason why he was not contested the case in accordance with law. Further, the learned counsel submitted that all these facts are narrated before the Court below. However, the Court below failed to consider the same and rejected the plea of the petitioner. Thus, unless and otherwise the delay of 943 days is condoned, the principle interest in the property will not be safeguarded. Hence, he prayed to condone the delay of 943 days.

5.Per contra, Mr.N.Manoharan, learned counsel appeared for the respondent strongly opposed the submission of the learned counsel for the petitioner and contended that the reason given by the Revision Petitioner is not proper and no such settlement was arrived between the petitioner and the respondent. The petitioner has not stated the date of the settlement, who are all

participated and what are the terms of the settlement in the application. Further, the learned counsel for the respondent submitted that the person who paid a sum of Rs.10,00,000/- will not agree for any such oral settlement without any written agreement about the returning of the amount. Considering all those facts, the Court below has rightly dismissed the application for condonation of delay.

6.On the other hand, the learned counsel for the Revision Petitioner submitted that the Revision Petitioner and the respondent herein are in the Finance Business and there was a dispute among them. Therefore, the respondent forged the signature of the petitioner and prepared an sale agreement as if executed by the Revision Petitioner and in fact the petitioner has filed the application to send the documents for examining the signatures, however, the same was dismissed.

7.Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

8.The suit has been filed for specific performance. According to the

respondent he has paid a sum of Rs.8,00,000/- as advance at the time of the execution of the sale agreement and has paid another sum of Rs.2,00,000/- after the execution of the sale agreement. Both the counsel admitted that it is an un-registered sale agreement. On perusal of the application, it appears that the reason stated by the Revision Petitioner for delay of 943 days is that there was an amicable settlement in the year 2014 and as per the settlement the respondent agreed to withdraw the suit. But, the respondent failed to withdraw the suit and the petitioner has also not given any instruction to his Lawyer.

9. Further the petitioner has not mentioned anything in the application about what sort of settlement arrived between the parties, who are all participated for the settlement, date of the settlement and reason for non-reporting the same to the Court. No doubt it is a failure on the part of the Revision Petitioner. The Court below dealt with all these aspect in an elaborate manner. However, the interest in the property needs to be decided by allowing the other party to contest the suit. Such interest cannot be decided by way of ex parte proceedings while the petitioner/defendant vehemently contending that his signature has been forged. Therefore, this Court is of the view on equity, it

would be appropriate to allow the application to condone the delay and permit both the parties to contest the suit. If the application is not allowed, it will cause serious prejudice to the petitioner. Therefore, this Court is inclined to condone the delay of 943 days in filing the application to set aside the exparte order dated 13.06.2014, for the interest of justice subject to the payment of costs.

10.In view of the above, the petitioner is directed to pay the costs of Rs.10,000/- to the respondent within a period of four weeks from the date of receipt of the copy of this order. Since the suit is pending from the year 2012, this Court directs the Court below to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

11.With the above directions, the Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed.

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

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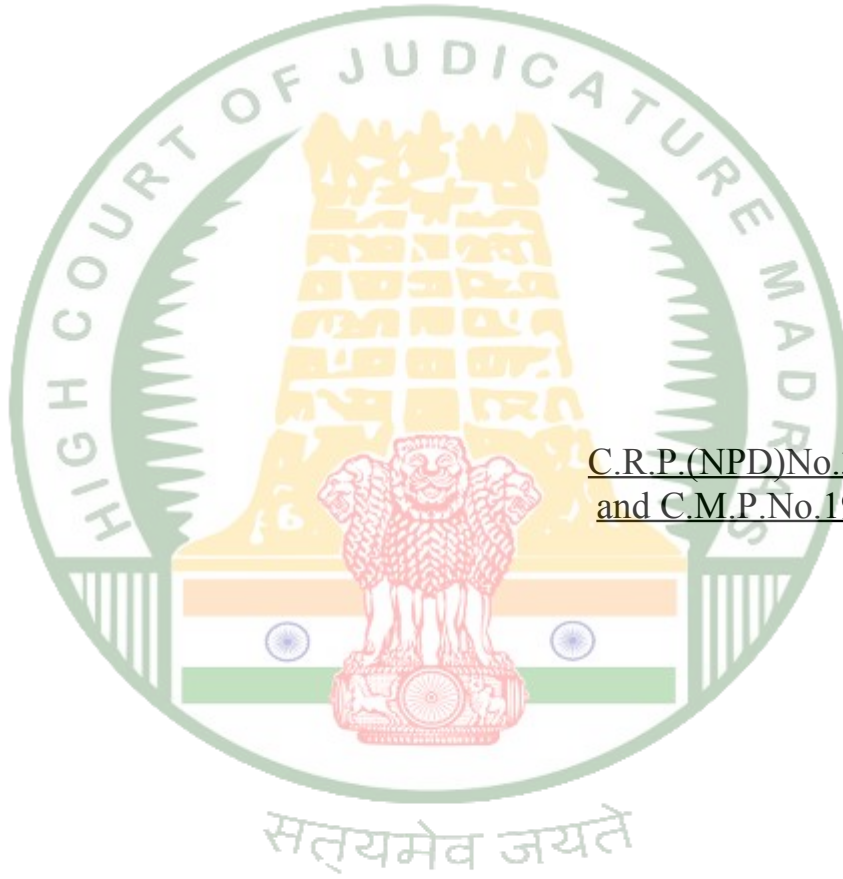
The II District-cum-Sessions Court, Tiruppur.



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KRISHNAN RAMASAMY,J.

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