

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2021

CORAM

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

CRP (PD) No.3975 of 2018
and
CMP No.22051 of 2018

K.Ponnusamy Petitioner

Vs

1. J.Ramachandran
2. Manonmani Vellaisamy
3. Sakunthala Gopalakrishnan
4. M.Balaraman
5. S.M.Raja Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 04.10.2018 made in I.A.No.107 of 2018 in O.S.No.14776 of 2010 on the file of the XV Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.V.R.Appaswamee
For R1 : Mr.S.Vinod
For R2 : Died (Steps due)
For R3 & R5 : Not ready in notice
For R4 : Notice served

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 04.10.2018 made in I.A.No.107 of 2018 in O.S.No.14776 of 2010 on the file of the XV Additional Judge, City Civil Court, Chennai, thereby allowing the petition to condone the delay in filing the petition to set aside the ex-parte decree.

2. The revision petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit in O.S.No.14776 of 2010 for recovery of money on the Promissory Note. After receipt of the suit summons, the first respondent failed to appear before the Court below and as such he was set ex-parte and ex-parte decree was passed on 06.03.2012.

3. On the strength of the decree, the petitioner filed an Execution Petition in E.P.No.1263 of 2016. In the Execution Petition, a notice was duly served to the first respondent and he filed vakalat on 02.08.2017 and also filed his counter on 14.12.2017. Thereafter, the first respondent filed a petition to set aside the ex-parte decree with a delay of 2257 days.

4. The only point raised by the petitioner is that when the first respondent was able to appear before the Execution Court as early as on 02.08.2017 and also filed a counter on 14.12.2017, the respondent did not file any petition to set aside the ex-parte decree immediately. Only on 11.06.2018, the first respondent filed a petition to set aside the ex-parte decree with a huge delay of 2257 days.

5. A perusal of the affidavit filed in support of the condone delay petition reveals that the suit itself is barred by limitation. It was re-presented before the Court with a delay of 1360 days without giving any notice to the first respondent. Therefore, no suit notice was served to the first respondent in the original suit by way of substituted service and he was set ex-parte. That apart, the first respondent averred that he got a good case to defend the suit.

6. Considering the above facts and circumstances of the case, the Court below allowed the petition with cost of Rs.15,000/-. Therefore, this

Court finds no infirmity or illegality in the order passed by the Court below. However, the Trial Court is directed to complete the trial, within a period of six months from the date of receipt of a copy of this order.

7. With the above directions, 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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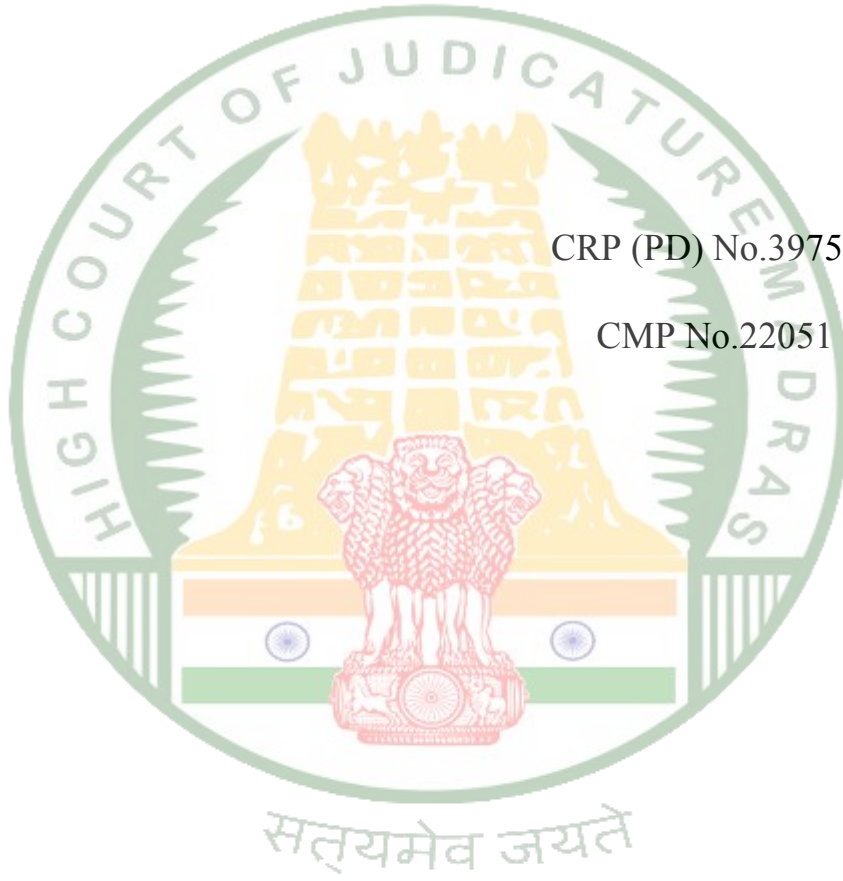
To

The XV Additional Judge,
City Civil Court, Chennai.

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G.K.ILANTHIRAIYAN,J.

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