

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP (NPD).No.4230 of 2018

and

CMP.No.23212 of 2018 and CMP.No.4526 of 2020

G.Jagatheesan

... Petitioner

Vs.

Arulmigu Elachiamman Kovil and Karpaga Vinayagar Kovil

Represent by its present administrator

Thangarasu @ Thanarasu

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to allow the Civil Revision Petition and to set aside the ex-parte order and decree in I.A.No.681 of 2017 in O.S.No.160 of 2015 dated 07.09.2018 passed by the District Munsif Court, Nagapattinam, consequently permit the petitioner to defend the suit in O.S.No.160 of 2015.

For Petitioner : Mr.N.Ganesh

For Respondent : Mr.P.Dineshkumar

ORDER

This Civil Revision Petition is filed as against the fair and decretal order passed in I.A.No.681 of 2017 in O.S.No.160 of 2015 dated 07.09.2018 on the file of the learned District Munsif, Nagapattinam, thereby

dismissing the petition to condone the delay in filing the application to set aside the ex-parte decree.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed a suit for recovery of possession. On receipt of summons, the petitioner failed to appear before the Court below and as such, he was set ex-parte and the ex-parte decree was passed on 18.12.2015. Therefore, the petitioner filed a petition to set aside the ex-parte decree with a delay of 501 days and the same was dismissed. Aggrieved by the same, the present Civil Revision Petition is filed.

3. On a perusal of the affidavit filed in support of the condone delay petition, it reveals that when the petitioner came to understand about the ex-parte judgment and decree, immediately, he filed a petition to set aside the ex-parte decree along with the application to condone delay. The suit property is in possession and enjoyment of the petitioner for the past several years. In the said petition, the petitioner side documents were marked as Ex.R.1 and Ex.R.2. Ex.R.1 is the notice and Ex.R.2 is the acknowledgement. As per the notice dated 04.11.2016, the Petitioner was informed about the

judgment and decree passed against the petitioner and the same was duly acknowledged by the petitioner herein. Therefore, on 04.11.2016, the petitioner had knowledge about the ex-parte judgment and decree passed against him. On the strength of the ex-parte decree, the respondent also filed an Execution Petition, in which the petitioner received notice and sought time to file counter on two occasions. Only thereafter viz., after a period of seven months, the petitioner come forward with the petition to set aside the ex-parte decree with the delay of 501 days. Therefore, he filed a false affidavit and there is no sufficient cause for the delay. Therefore, the Court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below.

4. Accordingly, this Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

सत्यमेव जयते

20.07.2021

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

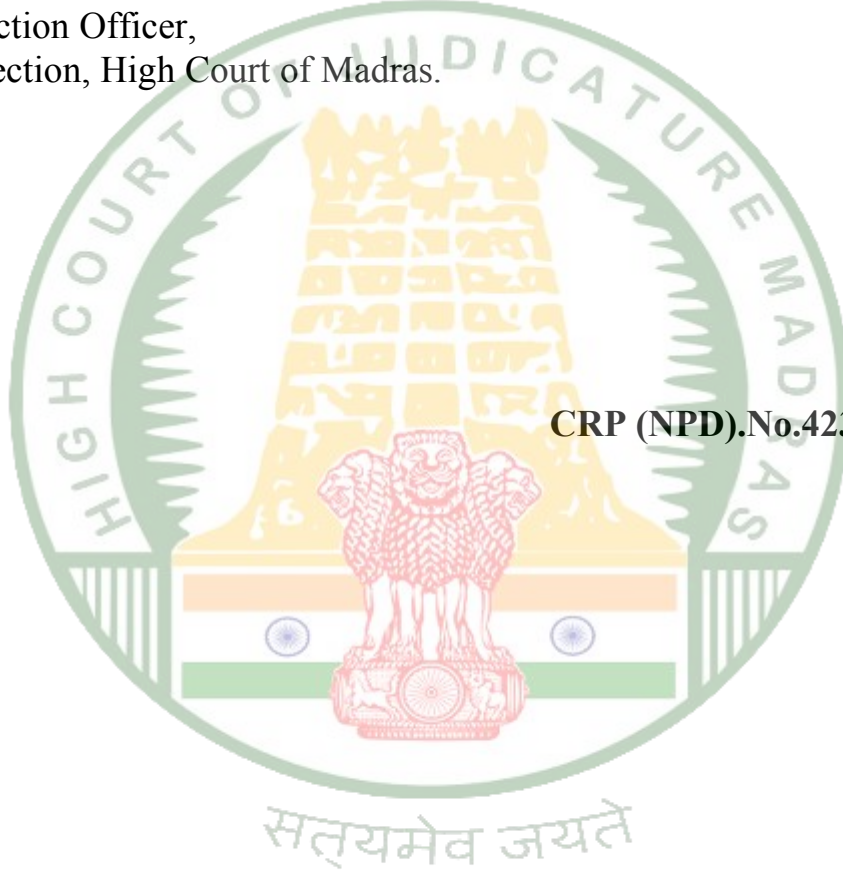
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G.K.ILANTHIRAIYAN,J.

Kv

To

1. The District Munsif, Nagapattinam.
2. The Section Officer,
V.R. Section, High Court of Madras.



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