

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2021

CORAM

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

C.R.P.(NPD)No.4259 of 2018

K.Logeshkumar

... Petitioner

Vs.

1. N.Ravichandran

2. S.Malarkannan

3. R.M.Subramaniam

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 12.10.2018 made in I.A.No.1028 of 2016 in O.S.No.75 of 2013 on the file of the II Additional District-cum-Sessions Court, Tiruppur District.

For Petitioner : Ms.D.Chitra Maragatham

For Respondents : Mr.V.P.Sengottuvel

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order dated 12.10.2018 passed by the learned II Additional District-cum-Sessions Judge, Tiruppur, in I.A.No.1028 of 2016 in O.S.No.75 of 2013, thereby dismissing the petition to condone the delay of 972 days in filing the petition to set aside exparte decree.

2. The petitioner is the defendant and the respondents are the

plaintiffs. The respondents entered into an agreement to purchase the property with the petitioner herein by the sale agreement deed dated 07.05.2012. Thereafter the petitioner failed to perform his part of the contract. Therefore, the respondents filed suit in O.S.No.75 of 2013 for specific performance in respect of the suit property. In the suit, the respondents filed petition in I.A.No.457 of 2013 for permanent injunction. In the suit as well as the I.A., notices were served on the petitioner and he entered appearance through his counsel on 19.04.2013. Thereafter the matter was repeatedly adjourned for filing written statement in the suit as well as counter in the I.A. Finally the petitioner was set exparte and the exparte judgment and decree passed on 26.09.2013.

3. Pursuant to the decree, the respondent filed execution petition in E.P.No.36 of 2014. In the execution petition also notice was served to the petitioner and he engaged counsel and entered appearance before the execution Court on 28.08.2014 and sought time for filing counter. For filing counter, the execution petition was repeatedly adjourned and thereafter the petitioner was set exparte and the execution petition was posted for

submitting fair sale deed. Accordingly the sale deed was executed by the Court below in favour of the respondents in respect of the suit property on 28.04.2016. In fact, delivery was also ordered in favour of the respondents herein. Thereafter, only on 27.07.2016, the petitioner filed the present petition in I.A.No.1028 of 2016 to condone the delay of 972 days in filing the petition to set aside the **exparte** decree dated 26.09.2013. The Court below dismissed the said petition as against which, the present Civil Revision Petition.

4. On perusal of the affidavit filed in support of the condone delay petition, the petitioner stated that he engaged one Mr.Gunasekaran, Advocate, on his behalf and at that juncture, he obtained signature in two vakalath from the petitioner. The said advocate colluded with the respondents and allowed them to get favourable order from the Court below. Therefore, he prayed to condone the delay petition.

5. It is seen that the suit itself filed in the year 2013, whereas the

petitioner stated in his affidavit that his signature was obtained by the said Gunasekaran in the month of September, 2012 itself. Therefore, the Court below dismissed the condone delay petition for the reason that the petitioner failed to state any sufficient cause. That apart, the petitioner also suppressed the fact that he entered appearance in the execution petition as early as on 28.08.2014 itself. Therefore, the petitioner had a knowledge about the exparte decree passed against him and also about the execution proceeding. Therefore, the trial Court rightly dismissed the petition and this Court finds no infirmity of illegality in the order passed by the Court below.

6. Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs.

29.06.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

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To

1. The II Additional District-cum-Sessions Judge,
Tiruppur.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

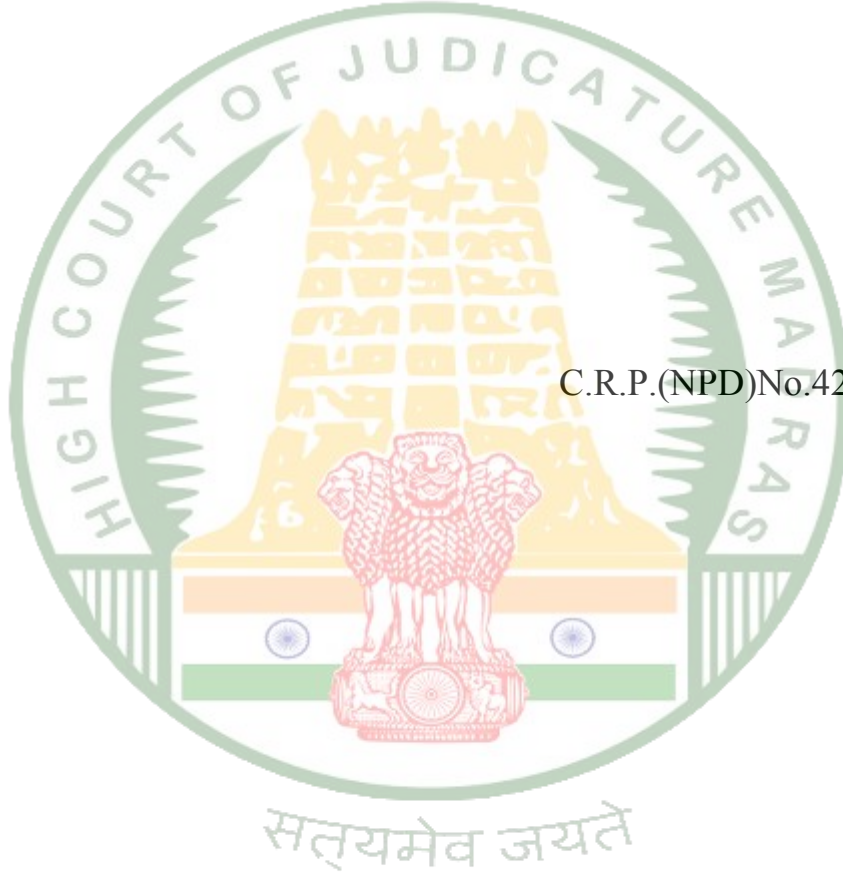


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G.K.ILANTHIRAIYAN, J.

rts



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