

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CRP (NPD) No.3208 of 2017
and C.M.P. No. 14988 of 2017

V.Mahendiran

... Petitioner

vs.

M.Perumal

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Constitution of India, against the fair and decretal order dated 11.07.2017 made in I.A. No. 602 of 2016 in O.S.No. 218 of 2013 on the file of the Sub Court, Dharmapuri District.

For Petitioner : Mr.P.M.Jayachandran

ORDER

Aggrieved over the order condoning the delay of 641 days in setting aside exparte decree, the petitioner / plaintiff is before this Court.

2. It is the contention of the petitioner that the Court should have imposed exorbitant Costs for the unexplained delay. A reading of the order passed by the Court below would go to show that the erstwhile counsel engaged by the respondent had indulged in some unethical practice, which seriously deprived his rights. He has issued legal notice against the erstwhile counsel also. The Trial Court, after considering the materials on record has found that for the fault of the advocate, the litigant shall not suffer. In the instance case, the respondent was set exparte and the decree was also executed without his knowledge. Hence, with a view to give an opportunity to the respondent to contest the case on merits, the delay of 614 days was condoned.

3. However, the learned counsel for the petitioner, would insist that some more costs to be awarded. The awarding of costs is a prerogative of the Trial Court and the Trial Court has awarded a sum of Rs.2000/- to the other side as costs. The respondent will be prejudiced, if the order is modified without notice to him. On the other hand, the petitioner still has an opportunity to contest the case on merits.

4. Considering the hardships caused to the petitioner / plaintiff due to re-opening of the case, a direction is given to the Sub

Court, Dharmapuri, to dispose of the suit, within a period of four months from the date of receipt of a copy of this Order.

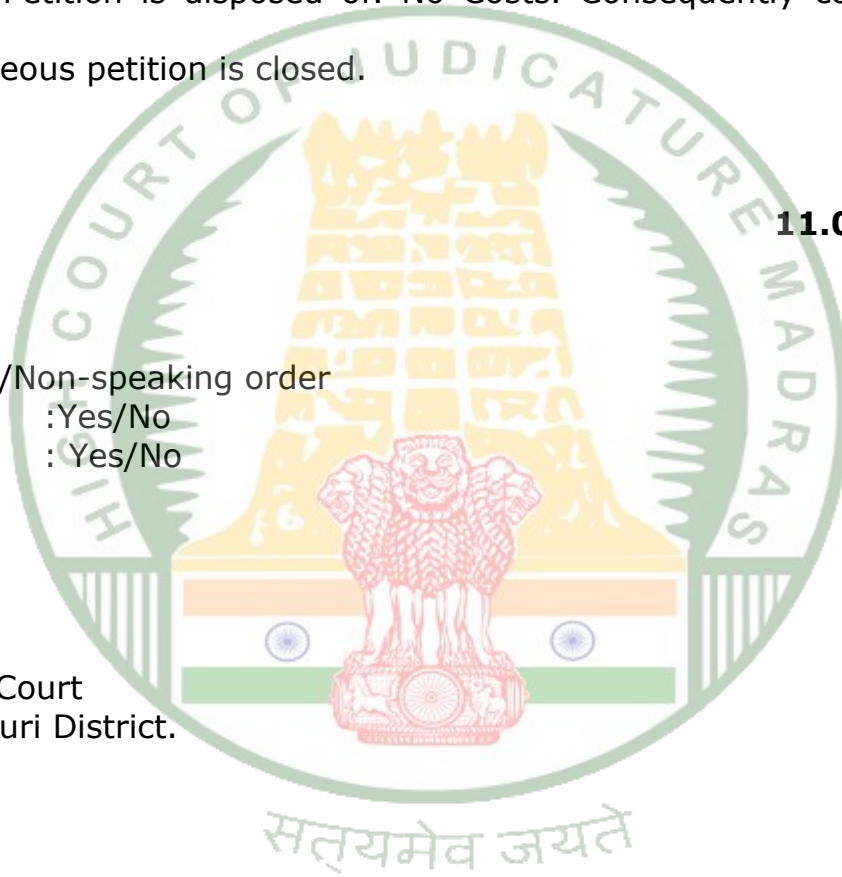
5. With the above observation and direction, the Civil Revision Petition is disposed of. No Costs. Consequently connected miscellaneous petition is closed.

11.09.2017

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

To

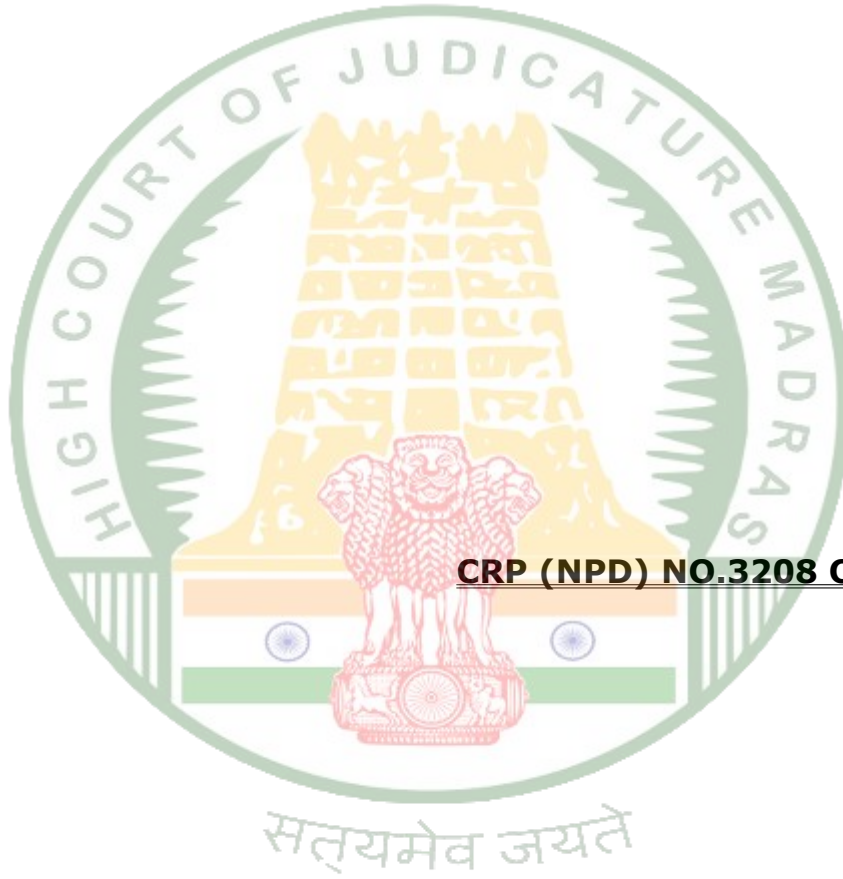
The Sub Court
Dharmapuri District.



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M.GOVINDARAJ, J.

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