

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.339 of 2015

Narmada @ Narmadasamy

.. Petitioner

Vs.

1.Mani
2.Nirmala
3.Arjunan

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 14.11.2014 made in I.A.No.79 of 2014 in unnumbered A.S.No. of 2014 on the file of the Principal District Court, Namakkal.

For Petitioner

: M/S.K.Velanganni for
Mr.T.Dhanyakumar

For Respondents : No Appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 14.11.2014 made in I.A.No.79 of 2014 in unnumbered A.S.No. of 2014 on the file of the Principal District Court, Namakkal.

2. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was served on the respondents and their names have been printed in the cause list, there is no representation on behalf of the respondents either in person or through counsel.

3. The petitioner is first defendant, first respondent is the plaintiff and the respondents 2 & 3 are the defendants 2 & 3 in O.S.No.146 of 2008 on the file of the Principal District Court, Namakkal. The respondents filed said suit for partition against the petitioner and respondents 2 & 3. The said suit was partly decreed on 12.07.2012. The petitioner filed an appeal along with I.A.No.79 of 2014 to condone the delay of 665 days in filing the appeal.

4. According to the petitioner, at the time of delivery of judgment, her husband met with a road accident on 09.07.2012 and he suffered severe head injuries. He was hospitalised in Kovai Medical Centre Hospital, Coimbatore and underwent surgery. She is the only person to take care of her husband and children, therefore, she could not meet the advocate and give instruction to file the appeal. After recovery of her husband, both the petitioner and her husband met the advocate and on his instruction, she filed the appeal along with the present application. The delay is neither wilful nor wanton. The first respondent filed counter affidavit and opposed the said application. The learned Judge dismissed the application on the ground that the petitioner has not given any reason for delay. The said reasoning of the learned Judge is not correct. The petitioner has stated that her husband met with the road accident on 09.07.2012, he was taking treatment in Kovai Medical Centre Hospital, Coimbatore and underwent surgery. The judgment was delivered on 12.07.2012. The learned Judge failed to consider this averment of the petitioner. From the affidavit filed in support of the present application filed by the petitioner to condone the delay of 665 days in filing the appeal, it is seen that the petitioner has given valid and sufficient reason to condone the delay.

5. For the above reason, the order of the learned Judge is liable to be set aside and it is hereby set aside. The learned Judge is directed to number the appeal and take the same on file, if it is otherwise in order.

6. Accordingly, the Civil Revision Petition is allowed. No costs.

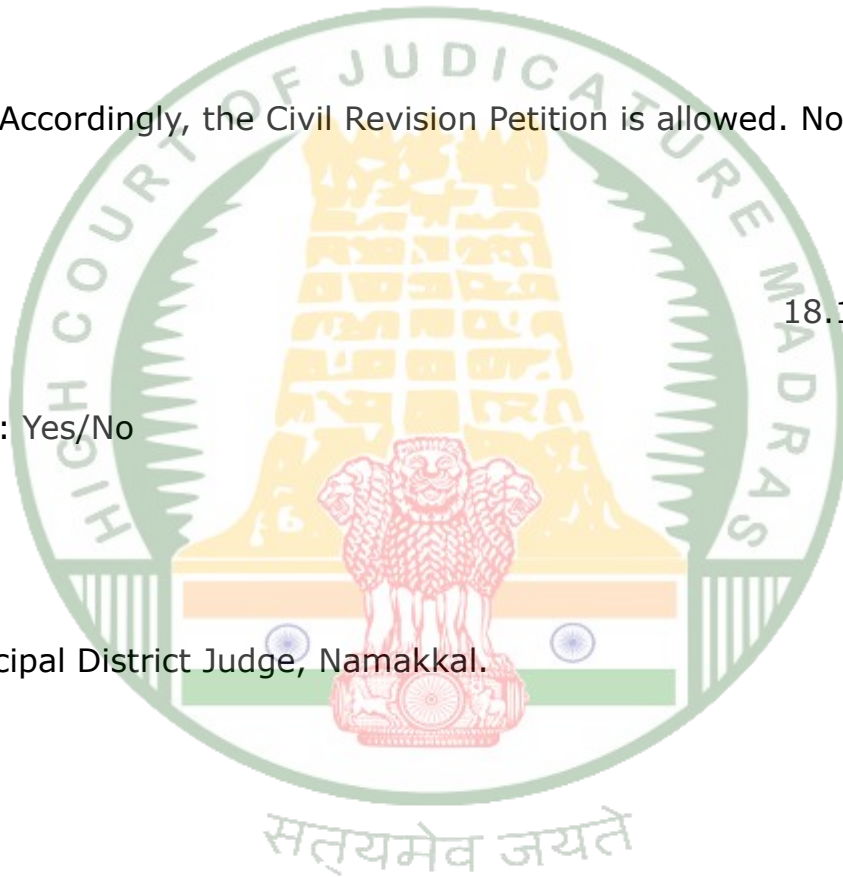
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Index : Yes/No

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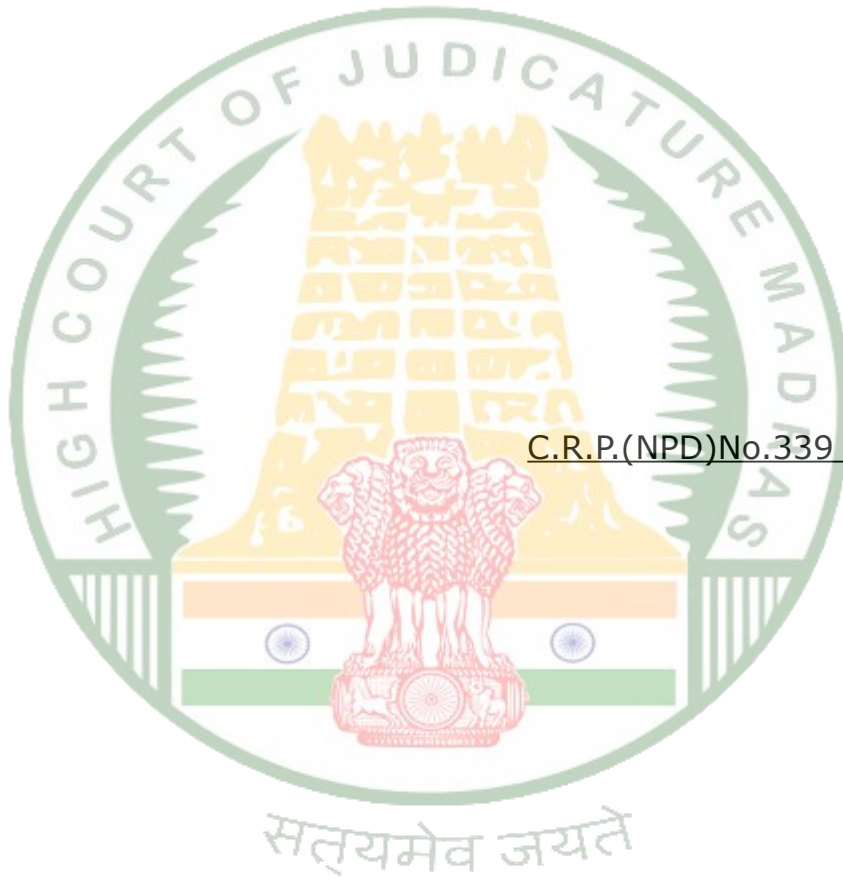
The Principal District Judge, Namakkal.



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V.M.VELUMANI, J.

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