

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP(NPD).No.3234 of 2017
and CMP.No.15862 of 2017

Nagammal

.. Petitioner

Vs

Ramalingam Chettiar

.. Respondent

PRAYER

Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 03.09.2015 made in IA.No.218 of 2013 in OS.No.145 of 2010 on the file of Subordinate Judge, Madurantakam.

For Petitioner : Mr.M.S.Subramanian

For Respondent : Mr.K.Govi Ganesan

ORDER

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According to the revision petitioner, the respondent has filed an application in IA.No.218 of 2013 in OS.No.145 of 2010 before the Subordinate Court, Madurantagam to condone the delay of 512 days to set aside the ex-parte decree passed on 10.10.2011 in the

above suit. According to the revision petitioner, there is no sufficient reason has been stated in the affidavit in support of the petition to condone the delay of 512 days. The trial court has erroneously allowed the application on payment of cost of Rs.1,000/-. Hence, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. Per contra, the learned counsel for the respondent would submit that the revision petitioner has filed the above suit for recovery of money, wherein ex-parte decree was passed, without adjudicating the matter on merits, the ex-parte decree has been passed against the respondent. Therefore, the respondent filed the instant application and the court below has considered the reasons stated in the affidavit and the nature of the suit and allowed the instant application. Hence, the Civil Revision Petition is liable to be dismissed.

3. By considering the facts and circumstances of the case and the submissions made by the learned counsel for the parties, the respondent has filed the instant application to condone the delay of 512 days in filing an application to set aside the ex-parte decree and the same was allowed. According to the respondent, no opportunity

was given to contest the suit. This court also accepts the findings of the court below that opportunity has to be given to the respondent and the suit shall be decided on merits after hearing both the parties. But, the inordinate delay can be compensated by imposing heavy cost on the respondent. Hence, the order of the court below is modified by imposing cost on the respondent.

4. In the light of the above facts, this Court is inclined to pass the following orders.

i). The order of the court below in IA.No.218 of 2013 is modified by enhancing the cost to Rs.15,000/- (Rupees Fifteen Thousand only) payable by the respondent to the revision petitioner through the counsel for the revision petitioner within a period of four weeks.

ii) In default in complying with the above order, the application in IA.No.218 of 2013 stands dismissed without reference to the court.

iii) In the event of complying with the order, the Subordinate Court, Madurantagam is directed to dispose of the suit in OS.No.145 of 2010 on merits and in accordance with law on or before 30.06.2018.

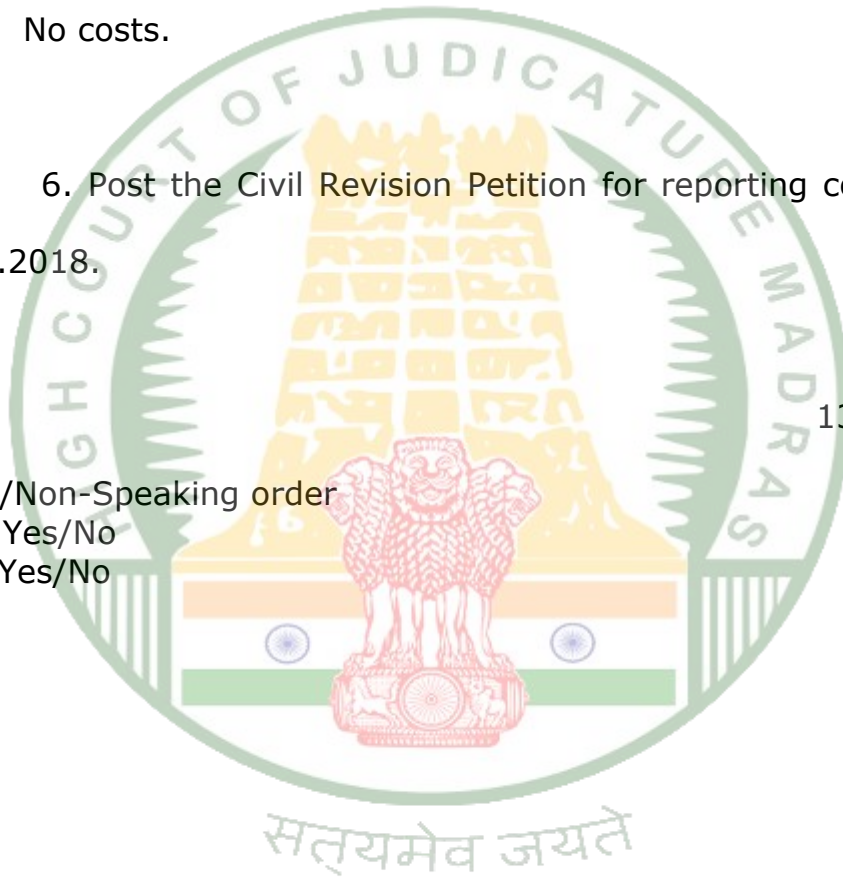
iv) Both the parties undertakes to cooperate for disposal of the above suit.

5. Thus, the Civil Revision Petition is party allowed with above directions. Consequently, the connected miscellaneous petition is closed. No costs.

6. Post the Civil Revision Petition for reporting compliance on 13.03.2018.

13.02.2018

Speaking/Non-Speaking order
Index :Yes/No
Internet:Yes/No
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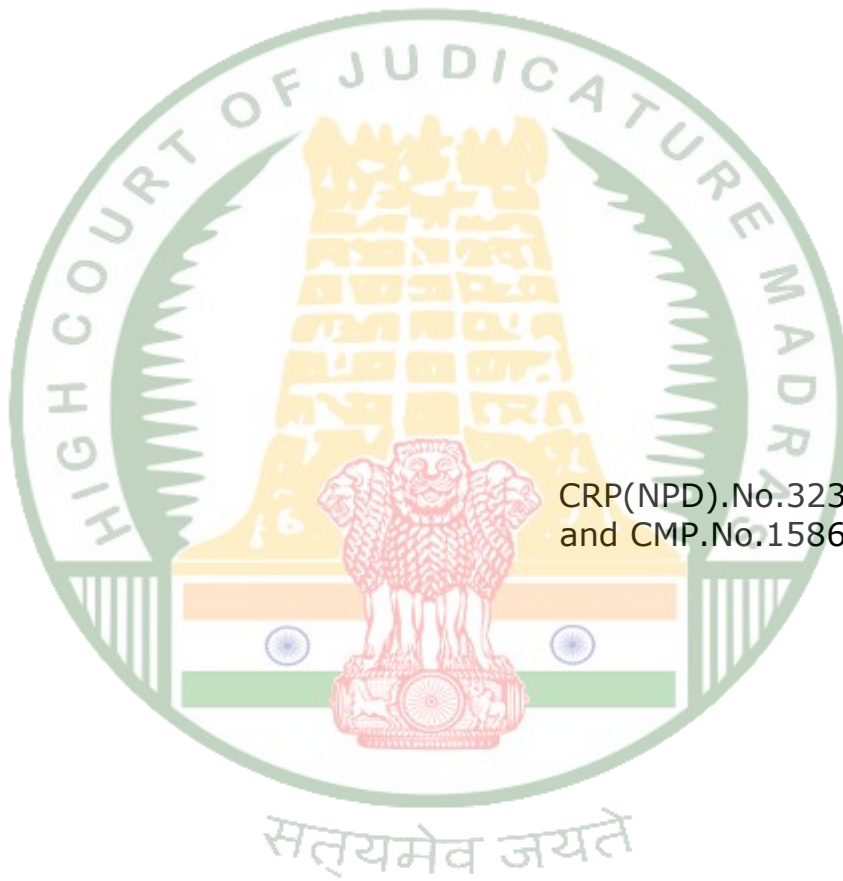
The Subordinate Judge,
Madurantakam.



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D. KRISHNAKUMAR J.,

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