

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No.1140 of 2016
and C.M.P.No.6275 of 2017

1.Thiyagarajan

2.Nagarajan

.. Petitioners

Vs

Nandagopal

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of CPC to set aside the order dated 04.02.2014 passed in I.A.No.186 of 2013 in I.A.No.1180 of 2007 in O.S.No.362 of 2005 on the file of the Principal District Munsif, Villupuram.

For Petitioners : Mr.Arun Dattan
for Mr.C.Munusamy

For Respondent : Mr.C.Prabakaran

ORDER

This Civil Revision Petition has been filed to set aside the order dated 04.02.2014 passed in I.A.No.186 of 2013 in I.A.No.1180 of 2007 in O.S.No.362 of 2005 on the file of the learned Principal

District Munsif, Villupuram.

2. According to the petitioners, the respondent/plaintiff has filed a suit in O.S.No.362 of 2005 against the petitioners/defendants 1 and 2 and another for declaration and permanent injunction on the file of the learned Principal District Munsif, Villupuram. In the said suit, as the petitioners have not appeared before the Court below on 23.06.2006, an ex parte decree was passed on the same day. Hence, the petitioners filed two applications namely I.A.No.1279 of 2006 and I.A.No.1180 of 2007 under Section 5 of the Limitation Act and under Order 9 Rule 13 CPC respectively seeking to condone the delay in filing an application and to set aside the order dated 23.06.2006. The Court below, allowed I.A.No.1279 of 2006 and also allowed another I.A.No.1180 of 2007 on 06.09.2006 on payment of costs of Rs.500/-. As the petitioners have not complied with the said conditional order, the said application was dismissed on 09.01.2006. Therefore, the petitioners filed present application in I.A.No.186 of 2013 under Section 5 of the Limitation Act to set aside the order passed in I.A.No.1180 of 2007 and to condone the delay of 1755 days in filing the petition to set aside the ex parte order. The Court below dismissed the said application on 04.02.2014. As against the said order, the present Civil Revision Petition has been filed.

3.The learned counsel for the petitioners/defendants 1 and 2 submitted that due to the financial crisis, the petitioners have not paid the costs and therefore, an opportunity has to be granted to the petitioners to comply with the order dated 06.09.2006. Hence, the learned counsel requested this Court to set aside the impugned order dated 04.02.2014.

4. Per contra, the learned counsel for the respondent/plaintiff submitted that the suit has been filed by the respondent for declaration and permanent injunction and in the said suit, the petitioners were set exparte and exparte decree was also passed on 23.06.2006. The learned counsel further submitted that the Court below already granted opportunity to the petitioners by allowing I.A.No.1180 of 2007 on payment of cost and the said application was dismissed for non-payment of the cost. From the above, it is clearly shown that, the petitioners, with an intention to drag on the proceedings, filed application after application against the respondent. Therefore, the Court below rightly dismissed the application. Hence, the Civil Revision Petition is liable to be dismissed.

5. Heard, the learned counsel for the petitioners and the learned counsel for the respondent and perused the materials available on record.

6. On a perusal of records, it is seen that the trial Court has already given an opportunity to the petitioners by allowing I.A.No.1180 of 2007 on payment of costs on 06.09.2006. But, the petitioners, without complying with the said order, filed the present application nearly after six years for condoning the delay, they have not stated sufficient reason in the affidavit as rightly pointed out by the learned counsel for the respondent.

7. Considering the facts and circumstances of the case and submissions made by the learned counsel for both sides, this Court is not inclined to interfere with the impugned order passed by the Court below and inclined to pass the following order:

"The impugned order dated 04.02.2014 passed in I.A. No.186 of 2013 in in I.A.No.1180 of 2007 O.S. No.362 of 2005 by the learned Principal District Munsif, Villupuram

is confirmed.

The Civil Revision Petition is dismissed. No order as to costs. Consequently, connected miscellaneous is closed."

14.03.2018

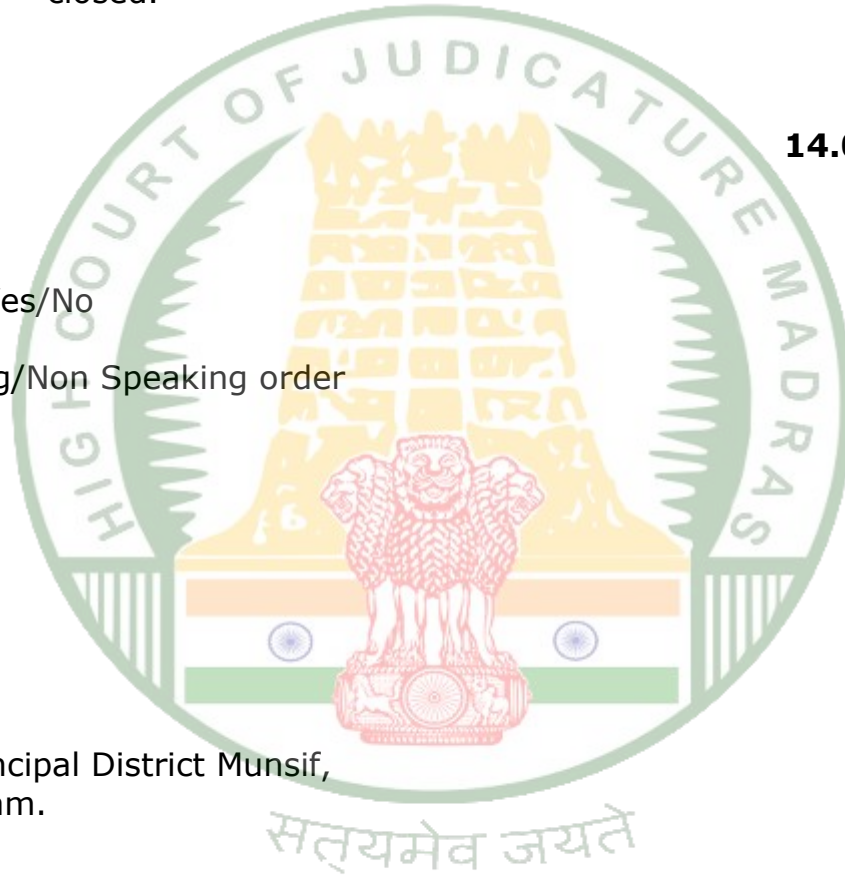
Index: Yes/No

Speaking/Non Speaking order

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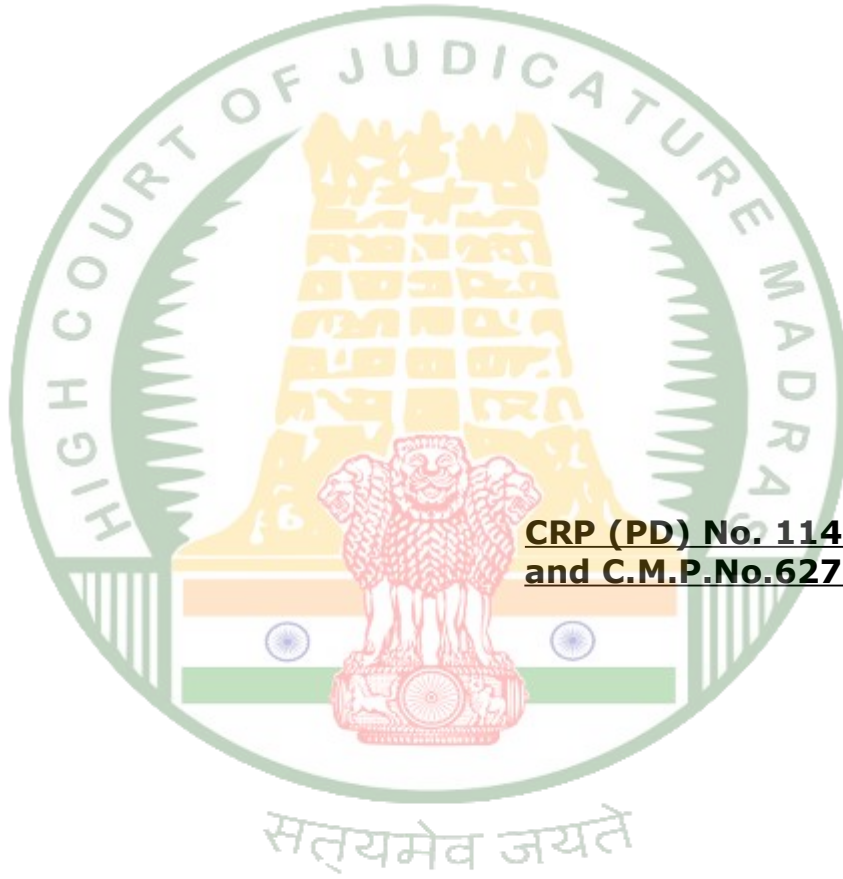
The Principal District Munsif,
Villupuram.



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D. KRISHNAKUMAR J.

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