

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 27.2.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.336 of 2016 and C.M.P.No.1780 of 2016

1 S.Lakshmi
2 M.Ranjitham
3 Minor M.Aarthi
4 Minor M.Preethi ... Petitioners/Defendants

(Petitioners 3 and 4 are represented by
natural guardian 2nd petitioner)

Vs.
V.Periasamy ... Respondent/Plaintiff

This Civil Revision Petition is filed under Article 227 of Constitution of India against the order, dated 12.08.2015 made in I.A.No.5 of 2015 in O.S.No.18 of 2011 on the file of the II Additional Subordinate Court, Erode.

For Petitioners : Mr.R.Kannan
For Respondent : Ms.Prithivi for
Mr.S.Kaithamalaikumaran

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ORDER

According to the petitioner, the respondent has filed a suit in O.S.No.18 of 2011 against the petitioner for specific performance before the II

Additional Subordinate Court, Erode. In the aforesaid suit, written statement was filed on 30.5.2011. Thereafter, due to non appearance of the petitioners, they were set exparte and exparte decree was passed on 19.12.2011. Thereafter, E.P.No.170 of 2012 was filed before the court below for execution of the decree. The petitioner has filed an application to set aside the exparte decree along with the application in I.A.No.5 of 2015 to condone the delay of 6 days in filing the application to set aside the exparte decree. However, the court below dismissed the application. Challenging the aforesaid order, the petitioner has filed the present Civil revision petition before this Court.

2 According to the petitioner, the petitioner has filed an application in the year 2012 and the same was returned without numbering. Thereafter, it was numbered in the year 2014. However, the application was dismissed by the court below. Therefore, the order passed by the court below is liable to be set aside.

3 The learned counsel for the respondent strongly objected that the application has been filed in the year 2012, the petitioner has not taken any steps to number the application within a reasonable time and thereafter, it was numbered in the year 2014. The petitioner has not stated sufficient reason for the inordinate delay in numbering the application. Therefore, the

order passed by the court below is perfectly valid in law and the Civil revision petition is liable to be dismissed.

4 Admittedly, the instant application has been filed in the year 2012 by the petitioner and the same was numbered in the year 2014. In the meantime, the respondent also obtained order in Execution petition. Therefore, the petitioner is not vigilant enough to take steps to number the application and because of the inordinate delay in numbering the instant application, the respondent has suffered hardship and the same shall be compensated by imposing cost on the petitioner.

5 In the light of decision of the Hon'ble Supreme Court in ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others [2013 (5) CTC 547 (SC)]***, wherein the Hon'ble Supreme Court has held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation of delay. Therefore, this Court is inclined to set aside the order passed by the court below by imposing cost on the petitioner.

D.KRISHNAKUMAR,J.

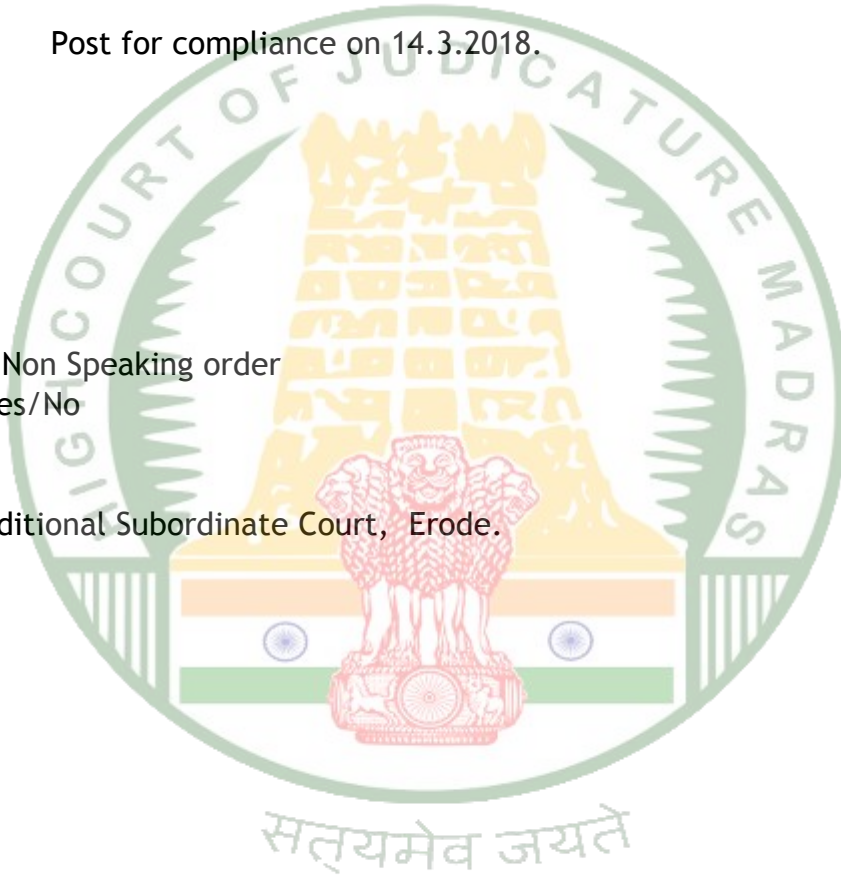
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6 In fine, the Civil revision petition stands allowed on payment of cost of Rs.5000/- to the respondent on or before 13.3.2018. No costs. Consequently, connected miscellaneous petition is closed.

Post for compliance on 14.3.2018.

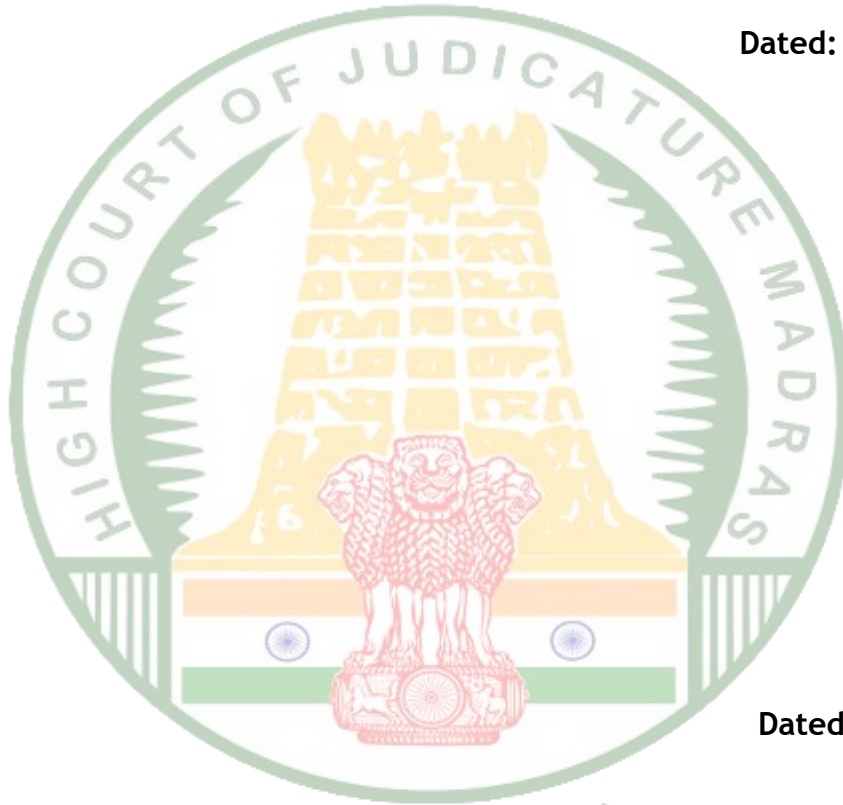
27.2.2018

Speaking/Non Speaking order
Index: Yes/No
vaan
To
The II Additional Subordinate Court, Erode.



**C.R.P.(PD) No.336 of 2016
and C.M.P.No.1780 of 2016**

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Dated: 27.2.2018

Dated: 7.2.2018

सत्यमेव जयते

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