

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.03.2018

CORAM

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

CIVIL REVISION PETITION(NPD) No.3504 of 2016
and
C.M.P.No.17823 of 2016

C.Thulasimani .. Petitioner

vs

T.Bhagavathiappan .. Respondent

The Civil Revision Petition filed under Section 115 of C.P.C to set aside the fair and final order dated 28.06.2016 passed in I.A.No.63 of 2016 in I.A.No.616 of 2014 in O.S.No.5 of 2008 on the file of II Additional District Munsif Court, Erode and allow the Civil Revision Petition.

For Petitioner ... Mr.Parthi Kannan
for Mr.S.Kaithamalai Kumaran

For Respondent ... Mr.R.Kandan Duraisamy

ORDER

The Civil Revision Petition has been filed to set aside the fair and final order dated 28.06.2016 passed in I.A.No.63 of 2016 in

I.A.No.616 of 2014 in O.S.No.5 of 2008 by the learned II Additional District Judge, Erode.

2. According to the petitioner/defendant, the respondent/plaintiff filed a suit in O.S.No.5 of 2010 against the petitioner for recovery of money. In the aforesaid suit, since the petitioner was absent, set exparte and exparte decree was passed on 10.10.2013. Hence, the petitioner has filed an application in I.A.No.616 of 2014 under Section 5 of the Limitation Act to condone the delay of 204 days in filing an application to set aside the exparte decree dated 10.10.2013 and the said application was dismissed for non prosecution on 07.12.2015. As against the said order, the petitioner filed I.A.No.63 of 2016 under Order 9 Rule 9 and Section 151 of C.P.C. to set aside the dismissal order dated 07.12.2015 passed in I.A.No.616 of 2014 and the said application was also dismissed for default on 28.06.2016. Aggrieved by the said dismissal order, the Civil Revision Petition has been filed by the petitioner.

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3.The learned counsel for the petitioner/defendant submitted that the petitioner was suffering from severe heart pain from first week of November 2015 and taking treatment in the hospital.

Therefore, he did not appear before the Court below for cross examination by the learned counsel for the respondent/plaintiff. Hence, the petitioner has filed the instant application in I.A.No.63 of 2016 to restore I.A.No.616 of 2014 within time. The Court below, without considering the case of the petitioner, erroneously dismissed the said application by order dated 28.06.2016 stating that the petitioner has not filed any medical proof issued by the Doctor, who treated him. The learned counsel further submitted that the petitioner being a plaintiff, has no intention to drag on the proceedings. Hence, he requested this Court to provide an opportunity to the petitioner to contest the case on merits by setting aside the impugned order passed by the Court below.

4.The learned counsel for the respondent submitted that the Court below rightly dismissed I.A.No.63 of 2016. The reasons stated by the petitioner for not attending the Court is totally false and baseless and he has not produced any medical proof for the illness suffered by him. Hence, the Civil Revision Petition is liable to be dismissed.

5. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

6. Considering the above facts and circumstances of the case, submissions made by the learned counsel for both sides, in order to provide an opportunity to the petitioner to contest the case, this Court is inclined to pass the following order:

"(i) The order dated 28.06.2016 passed in I.A.No.63 of 2016 in I.A.No.616 of 2014 in O.S.No.5 of 2008 by the learned Second Additional District Judge, Erode is set aside.

(ii) Both parties shall agitate the matter by raising their contentions before the Court below in I.A.No.616 of 2014 in O.S.No.5 of 2008 by producing necessary documents.

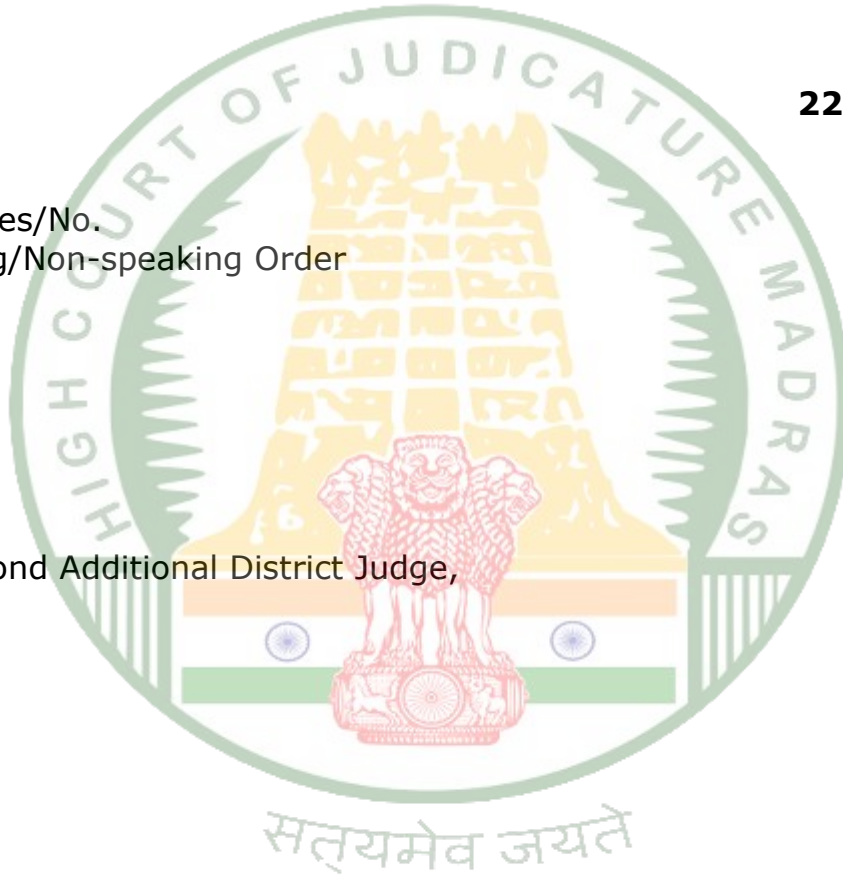
(iii) The learned Second Additional District Judge, Erode is directed to consider and dispose of I.A.No.616 of 2014 on merit and in accordance with law as expeditiously as possible."

The Civil Revision Petition stands allowed, with the above directions. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

22.03.2018

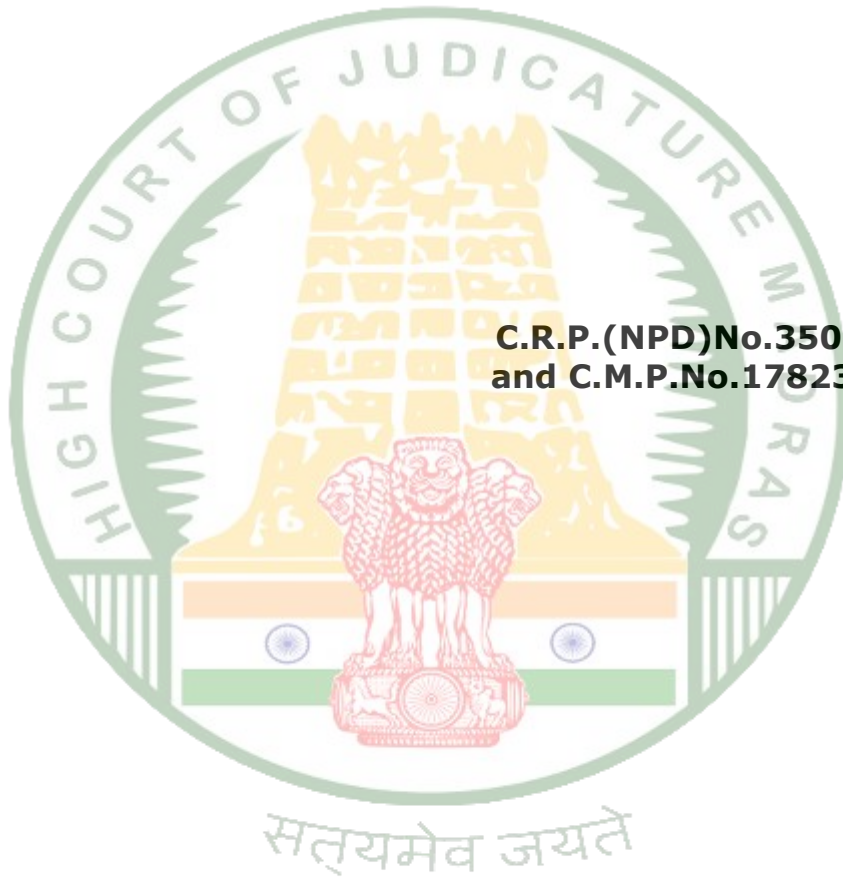
Index: Yes/No.
Speaking/Non-speaking Order
cla

To
The Second Additional District Judge,
Erode.



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D.KRISHNAKUMAR,J.
cla



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and C.M.P.No.17823 of 2016**

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Date: 22.03.2018