

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 08.03.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.368 of 2016

The Executive Officer
Sethiathoppu Town Panchayat,
Sethiathoppu,
Cuddalore District.

... Petitioner/4th Defendant

Vs

Balasubramanian

... Respondent/Plaintiff

This Civil Revision Petition is filed under Section 115 of C.P.C. against the order dated 18.11.2015 made in I.A.No.19 of 2015 in O.S.No.296 of 2010 on the file of the Additional District Munsif, Chidambaram.

For Petitioner : Mrs.G.Sumithra

For Respondent : Mr.M.A.Muthalagan

ORDER

According to the petitioner, the first respondent has filed a suit in O.S.No.296 of 2010 for declaration and permanent injunction against the petitioner herein. In the aforesaid suit, the petitioner has filed written

statement in the year 2011. At this stage, since the petitioner had not appeared before the court below, he was set exparte and the court below passed an exparte decree against the petitioner on 29.9.2011. The petitioner has filed an application in I.A.No.19 of 2015 to condone the delay of 1173 days in filing the application to set aside the exparte decree. The court below dismissed the said application. Challenging the said order, the petitioner has filed the present Civil revision petition before this Court.

2 According to the petitioner, on receipt of the notice from the respondent's brother on 24.11.2014 along with the copy of judgment, he came to know that exparte decree was passed against the petitioner and thereafter, immediately filed the instant application to condone the delay in filing the set aside application. According to the learned counsel for the petitioner, on the side of petitioner, Thiru Chakaravarthi, Administrative Officer, Sethiathoppu Town Panchayat, was examined as P.W.1 and Ex.P1 to P3 were marked to show that the petitioner came to know the said exparte decree on receipt of notice and the letter sent by the respondent. Further, it is also contended by the learned counsel for the petitioner that the suit is filed for declaration and permanent injunction. The petitioner being a Executive Officer of Sethiathoppu Town Panchayat is necessary to contest the suit on merit. The court below dismissed the said application without considering the case of the

petitioner. Therefore, the order passed by the court below is liable to be set aside.

2 The learned counsel for the respondent would submit that the petitioner has not stated sufficient cause to condone the delay in filing the set aside application. The first defendant who was also set exparte, other defendants 2, 3 and 5 are contesting the suit before the trial court. Therefore, the present application is filed without sufficient cause, the court below has rightly dismissed the said application. Therefore, the Civil revision petition is liable to be dismissed.

3 Heard the rival submissions of the counsel for the parties and perused the materials available on record.

4 From the germane of the facts and on the basis of the submission made by the counsel for the parties, the petitioner has filed an application by stating that the petitioner came to know the exparte decree passed by the court below only on receipt of the notice, dated 24.11.2014. Thereafter, immediately he filed the present application to condone the delay. Even though the delay is inordinate, however, by considering the prayer in the suit and the other defendants are contesting the suit before the trial court, this Court is of the view that an opportunity shall be granted to the petitioner

to contest the suit on merit, in the light of the 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. Further, no prejudice would be caused to the respondent if the application is allowed in favour of the petitioner.

5 In the facts and circumstances of the case and in the light of the judgment of the Hon'ble Supreme court cited supra, this court is inclined to interfere with the order passed by the court below. Accordingly, the order passed by the Additional District Munsif, Chidambaram in I.A.No.19 of 2015 in O.S.No.296 of 2010 is set aside. However, this Court feels it appropriate to impose cost on the petitioner.

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6 The Civil revision petition is allowed on payment of cost of Rs.15,000/- payable by the petitioner to the respondent within a period of four weeks from the date of receipt of copy of the order, failing which the Civil revision petition stands dismissed automatically without further reference to this Court. Connected miscellaneous petition is closed.

08.03.2018

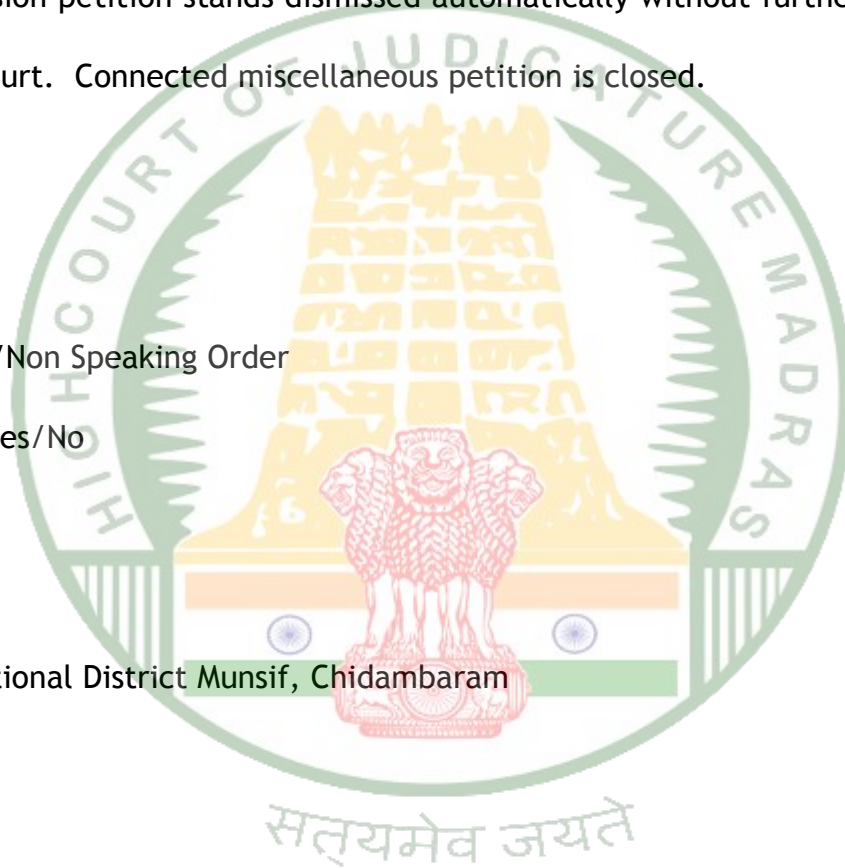
Speaking/Non Speaking Order

Index: Yes/No

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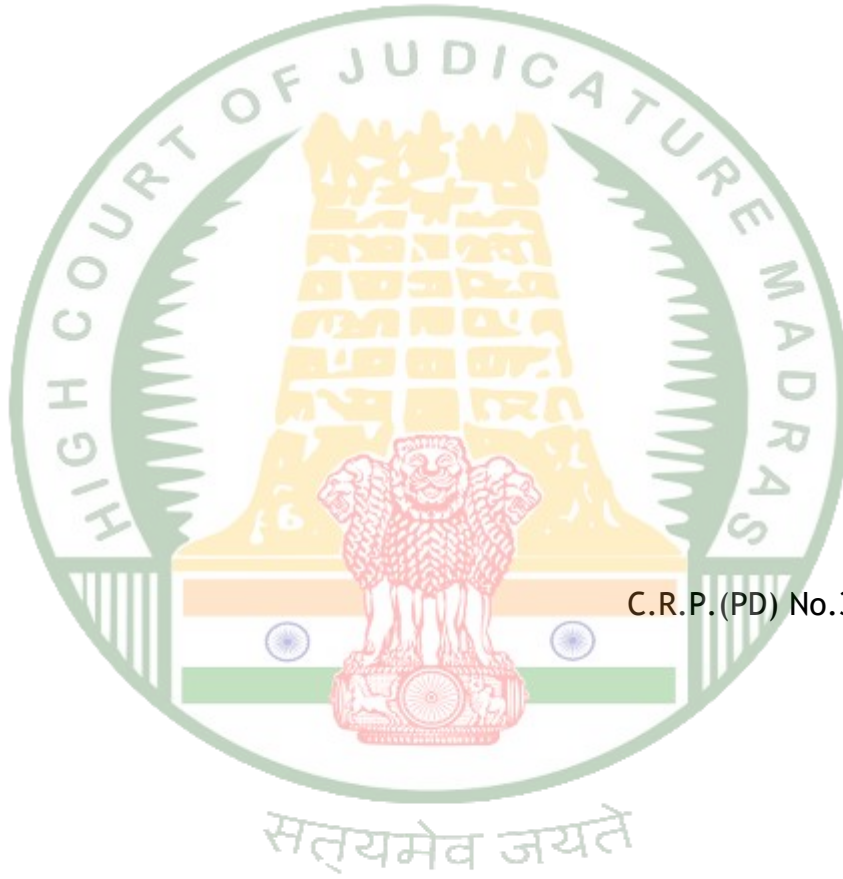
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D.KRISHNAKUMAR,J.

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Dated: 08.03.2018