

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.09.2018

Coram

The Honourable Ms.Justice P.T.ASHA

C.R.P.(NPD).No.4191 of 2010
and
M.P.No.1 of 2010

1.Jayakannu

2.Manickavasagam

.. Petitioners

Versus

Padamavathi

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.08.2010 made in I.A.No.60 of 2009 in O.S.No.34 of 2007 on the file of the Sub Court, Nagapattinam.

For Petitioners : Mr.V.Chandrasekaran

For Respondent : Mr.A.Muthukumar

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ORDER

The above Civil Revision Petition is filed challenging the order passed by the Subordinate Judge, Nagapattinam, in I.A.No.60 of 2009 in O.S.No.34 of 2007 in and by which the application filed by the

revision petitioners for condoning the delay of 553 days in filing application to set aside the ex-parte decree was dismissed. Given below is a total of the dates and events which would succinctly put across the facts and perspective.

SL.No.	Date	Events
1	14/05/2007	Date of filing of O.S.No.34 of 2007
2	08/06/2007	Hearing of the Suit. Summons for the 1 st defendant affixed as gone to Thirumarugal. Summons to 2 nd defendant was returned as refused. Service to 2 nd defendant was held to be sufficient and 2 nd defendant was called absent and set ex-parte
3	10/08/2007	Hearing of the Suit. 1 st defendant was served. Called absent and set ex-parte
4	18/08/2007	Posted for ex-parte evidence
5	21/09/2007	Ex-parte preliminary decree was passed
6	21/06/2008	Hearing of final decree application in I.A.No.13 of 2008. Notice to 1 st respondent was served. Notice to 2 nd respondent was affixed.
7	08/07/2008	Service was held to be sufficient for both defendants. Advocate Commissioner was appointed for suggesting mode of division.
8	31/10/2008	Advocate Commissioner issued notices
9	06/04/2009	Advocate Commissioner issued notices
10	13/04/2009	Commissioner visited the suit property
11	27/04/2009	Application to set aside ex-parte preliminary decree and condone delay petition were filed.

From a perusal of the above dates and events, it is clear that the second respondent has displayed absolute apathy to the summons of Civil Court, not once, but twice, and followed by his inactivity, even after receiving the first notice from the Advocate Commissioner on 31.10.2008. Despite these, the revision petitioners have in their

affidavit filed in support of the impugned petition stated that summons had not been served on them. This had been the reason adduced for seeking to have the decree to be set aside and delay condoned as narrated supra. Summons have been served on the first revision petitioner and it was refused by the second revision petitioner which implies knowledge about the proceedings.

2. I do not find any infirmity in the order of the learned subordinate Judge, Nagapattinam. Since, condonation of delay and setting aside ex-parte decree is not a matter of right, but has to be established with convincing reasons by the revision petitioner on the contrary, false reason for the delay has been averred in the affidavit filed in support of the impugned petition.

3. In the result, the civil revision petition is dismissed. Consequently, connected miscellaneous petition is Closed.

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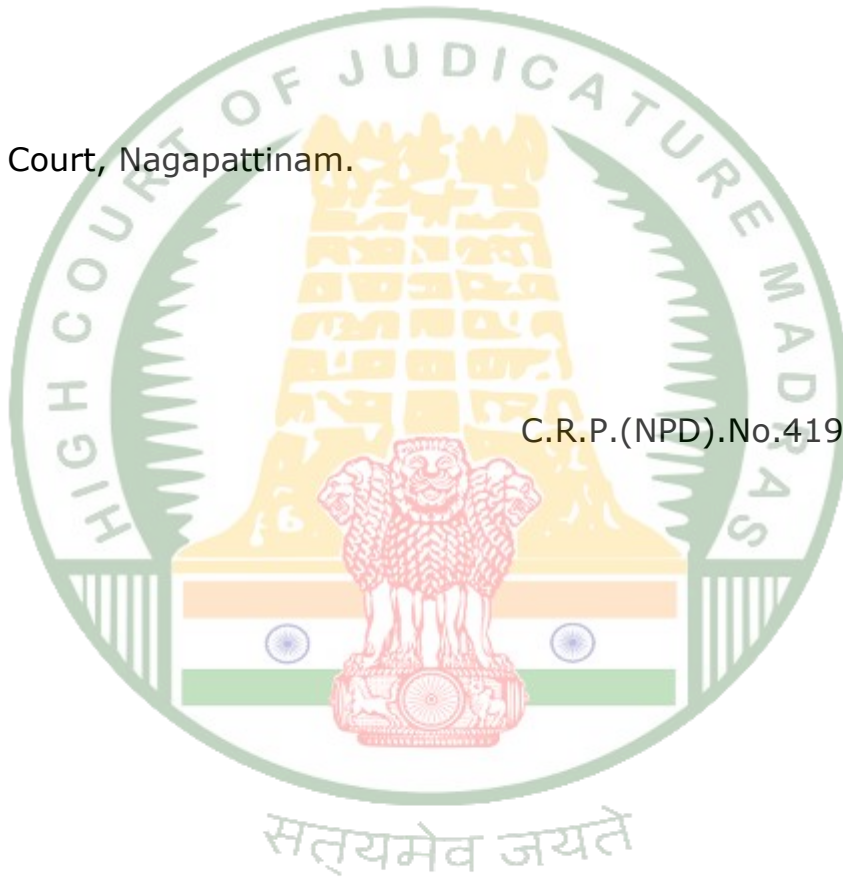
04.09.2018

at/dua
Speaking Order/ Non Speaking Order
Index: Yes/ No

P.T.ASHA.J.

AT

To
The Sub Court, Nagapattinam.



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