

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE. N.SATHISH KUMAR

**CRP NPD No.3858 of 2011 and
M.P.No.1 of 2011**

1. Bommaboyan
2. Avuliammal
3. Govindan

.... Revision Petitioners

Vs.

1. P. Nallusamy (died)
2. Sellammal
3. Bakkiam
4. Alamelu
5. Sarasu

(respondents 2 to 5 were impleaded as the legal heirs of the deceased sole respondent as per the order of this court in M.P.No.7557 of 2018 in CRP NPD No.3858 of 2011 dated 01.03.2019)

सत्यमेव जयते Respondents

PRAYER Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the orders dated 01.07.2011 passed in I.A.No.100 of 2011 in O.S.No.79 of 2008 by the Subordinate Judge, Rasipuram.

For Revision Petitioners : Ms.N.Premalatha

for M/s R.Nalliyappan

For respondent

: M/s T.Dhanyakumar

ORDER

This revision petition has been filed as against the orders passed by the trial court dismissing the application to condone the delay of 295 days in filing a petition to set aside the exparte decree passed on 15.09.2009.

2. The revision petitioners are the defendants in the original suit. The first and 2nd defendants are the parents of the third defendant. It is the contention of the revision petitioners that one of the son of the third defendant was suffering from heart decease and the third defendant had to be with him to take him to various hospitals and therefore, on the date of hearing on 15.09.2009 the defendants could not appear before the court and hence exparte decree was passed. Inview of the same, there occurred a delay of 295 days in filing a petition to set aside the exparte decree.

3. The respondent disputed the contention of the petitioner on the ground that the trial court dismissed the application only on disbelieving the version of the revision petitioners.

4. Heard the learned counsel appearing for the revision petitioners as well as the respondent.

5. In fact, before the trial court, the third petitioner was examined as PW1 and medical records were also marked as Ex.P1 to show that the third petitioner's son was treated for heart ailment. However, the trial court having found the same, held that the treatment was given only in the year 2004 and 2008, whereas exparte decree was passed on 15.09.2009. Merely because the medical records produced for taking treatment only up to the year 2008, one cannot say that the third petitioner's son has completely recovered from his heart ailment. When a person having bonafide reason to condone such delay, liberal approach has to adopted for advancing substantial justice. Merely because the medical records would not show further period of taking treatment, the same cannot be a ground to non suit the defence. Therefore, considering the nature of the suit, which is filed for specific performance, I am of the view that one more opportunity has to be given to the revision petitioners to contest the suit.

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6. In the result,

(i) The civil revision petition is allowed. No costs. The connected civil miscellaneous petition is closed.

(ii) The order passed by the trial court is set aside.

(iii) The trial court is directed to dispose the suit within 6 months from the date of receipt of a copy of this order.

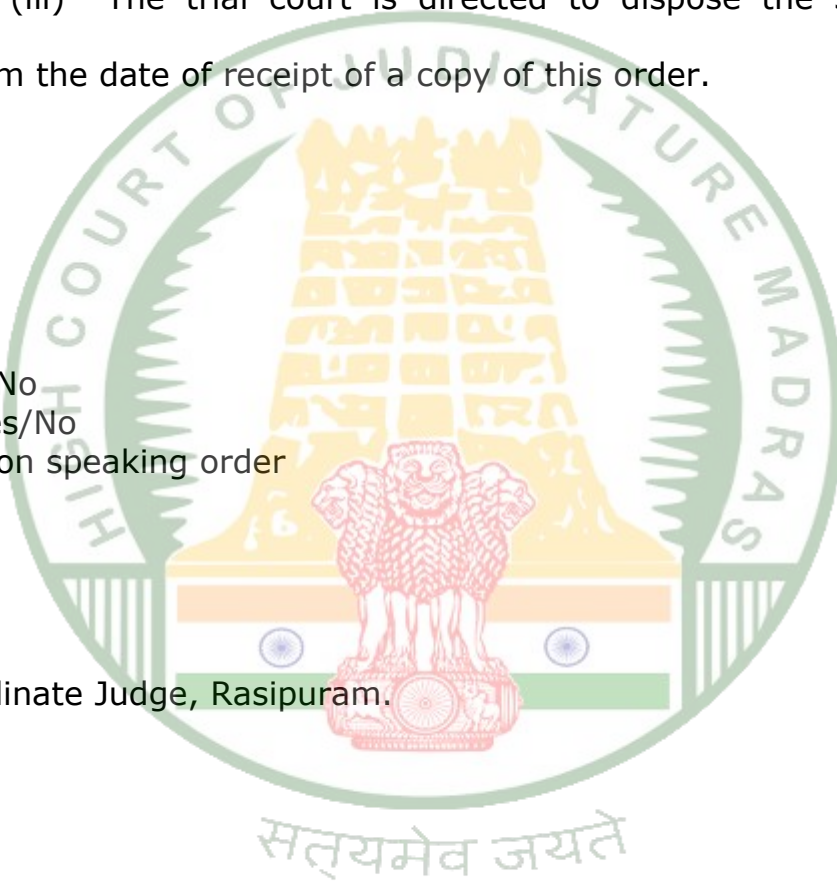
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Index:Yes/No
Internet:Yes/No
speaking/non speaking order
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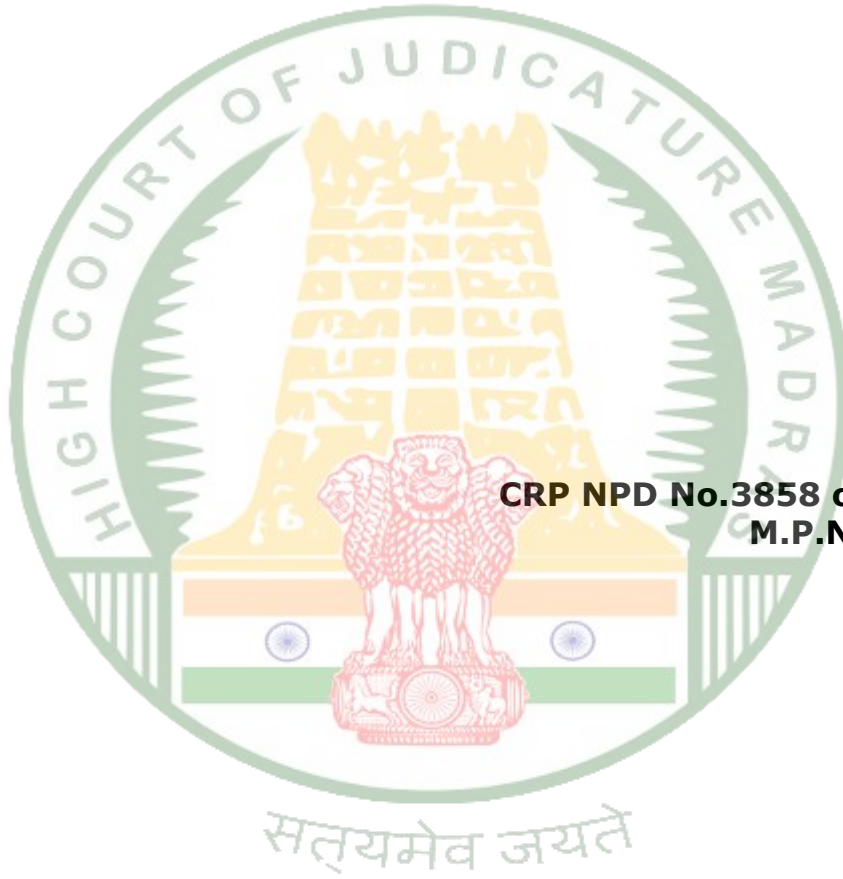
The Subordinate Judge, Rasipuram.



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N.SATHISH KUMAR, J.,

mst



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**01.03.2019
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