

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRANC.R.P(NPD) No.1143 of 2018

Saral Santhakumari Petitioner

Versus

N.Satishkumar Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, praying to set aside the order dated 06.12.2017 in I.A.No.438 of 2017 in O.S.No.84 of 2014 passed by the Subordinate Judge, Sathiyamangalam.

For Petitioner : No appearance

For Respondent : Mr.Sudhakar for
Mr.V.P.K.Gowtham**ORDER****(The case has been heard through video conference)**

This Civil Revision Petition is filed against the dismissal of Section 5 petition filed by the petitioner herein to condone the delay of 466 days to set aside the *exparte* decree.

2. The Court below after considering the affidavit filed in support of petition under Section 5 of the Limitation Act, dismissed as devoid of merits. Hence the present revision petition.

3. The Court below has pointed out that the suit for recovery of money based on pro-note was posted for cross examination of the plaintiff witness by the defendant/petitioner herein. Since 08.12.2015 the trial was adjourned for several dates due to the non cooperation of the defendant who did not cross examine the plaintiff witness despite several adjournments. Hence *exparte* decree was passed on 13.04.2016. To set aside the *exparte* decree, the petitioner herein has filed petition with delay of 466 days. While considering the condone delay petition, it was found that the *exparte* decree was passed on 13.04.2016. Pursuant to that, the decree holder has filed E.P.No.18 of 2017 and the petitioner herein received notice in E.P on 29.05.2017. Thereafter, the present petition is filed to set aside *exparte* decree stating that on 01.02.2016, the petitioner was suffering from severe dysentery, so could not attend the Court.

4. The Court below taking note of the fact that the petitioner is working as a B.T.Assistant in Panchayat Union Middle School. She has availed casual leave only for one day on 01.02.2016 and was attending the school for the rest of the days and between 01.02.2016 and 30.07.2016 she has availed leave for 25 ½ days as per Ex.R1 school staff attendance register. Since the delay of 466 days in filing the petition to set aside the *exparte* decree has not been properly explained, the Court below dismissed the petition.

5. On perusal of the record and the impugned order of the Court below indicates the order is in accordance with law and facts. There is no apparent error or illegality in the order to interfere under Section 115 of Civil Procedure Code. Hence the Civil Revision Petition is dismissed. No costs.

16.10.2020

Index : Yes/No
Internet : Yes/No
rpl

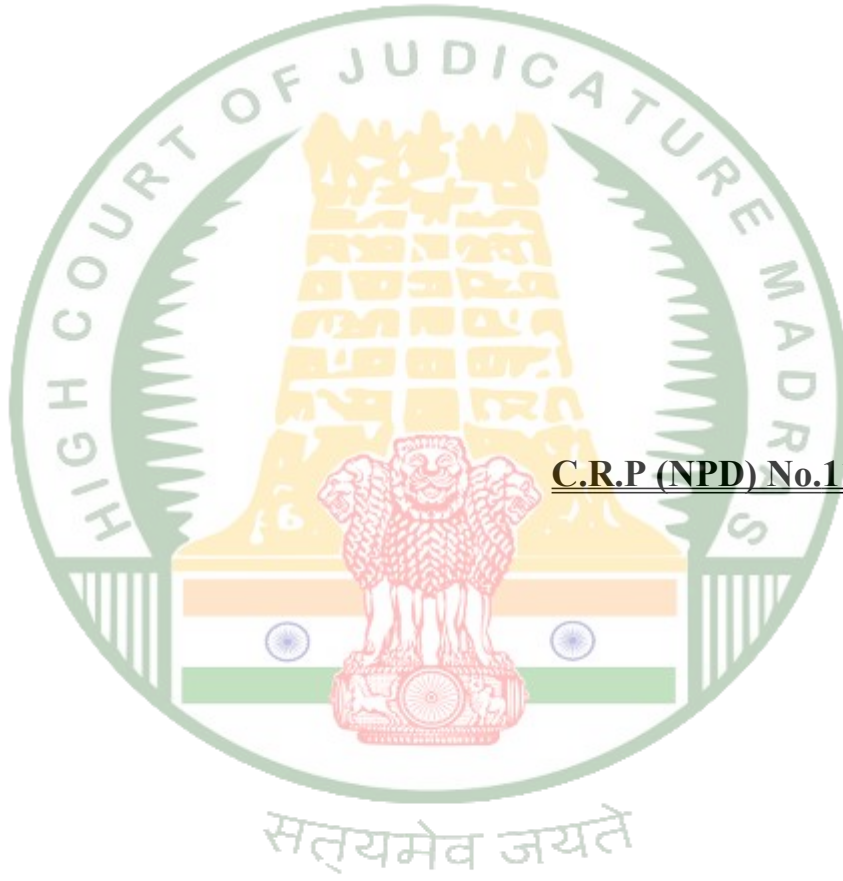
To

The Subordinate Judge, Sathiyamangalam.

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DR.G.JAYACHANDRAN, J.

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