

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.221 of 2018 and
CMP No.1270 of 2018

Govindaraj Petitioner

Vs

Vellaiyan ... Respondent

Prayer: The Civil Revision petition filed under Article 227 of Constitution of India, against the Judgment and final order dated 28.02.2017 made in I.A.No.228 of 2015 in O.S.No.16 of 2013 on the file of the Sub Judge, Sankari, Salem District.

For Petitioner : Mr.S.Lakshmanasamy

For Respondent : No appearance

ORDER

The defendant in O.S.No.16 of 2013 is on revision against an order refusing to condone the delay of 253 days in seeking to set aside the exparte decree.

2. The suit is one for recovery of a sum of Rs.2,52,077 /- along with interest at 12 % per annum on a sum of Rs.2 lakhs, allegedly borrowed by the defendant on the strength of the promissory note dated 26.09.2010. Since the defendant did not file a written statement on 06.02.2014, he was set exparte and the suit came to be decreed exparte on 26.02.2014. The defendant applied for setting the said decree on 04.12.2014 along with the Written statement, contending that the promissory note was executed as a security for chit transaction. The reasons assigned for the delay by the defendant is that he suffered a bout of Jaundice.

3. The learned trial Judge rejected the claim of the petitioner on the ground that there is no sufficient evidence to support his claim and dismissed the application.

4. I have heard Mr.S.Lakshmanasamy, learned counsel appearing for the petitioner. The respondent though served, is not appearing either in person or through counsel duly instructed.

5. Mr.S.Lakshmanasamy, learned counsel appearing for the petitioner would contend that the reasons assigned for the delay is that the petitioner was suffered from Jaundice and the petitioner has let in evidence in support of the averments in the affidavit filed in support of the petition. He would submit that the trial court has erred in microscopically examining the evidence to conclude that the petitioner has not made out a sufficient cause.

6. I am unable to sustain the approach of the learned trial Judge. In *University of Delhi vs Union of India* reported in *2019 SCC online 1634*, the Hon'ble Supreme Court has pointed out that the Courts must be liberal in condoning the delay. In this case on hand, the trial Court has given a finding that the petitioner is supposed to assign reasons for each and everyday's delay. I am unable to sustain the said conclusion from the records available.

7. I also do not see any negligence or lack of diligence on the part of the petitioner. I am convinced that the trial Court was wrong in

dismissing the application. Hence, this Civil Revision petition is allowed. The order of the trial Court dated 28.02.2017 is set aside. I.A.No.228 of 2015 will stand allowed. The delay is condoned. The trial Court is directed to number the application under Order IX Rule 13 of the Code of Civil Procedure and proceed with the same in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

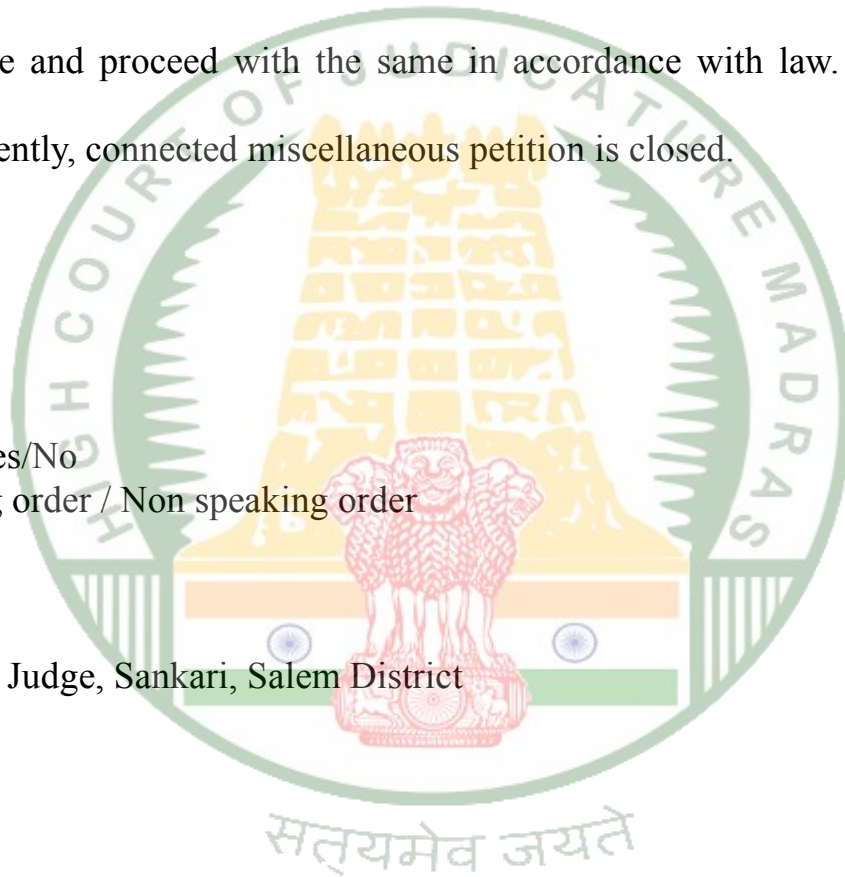
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Index: Yes/No
Speaking order / Non speaking order

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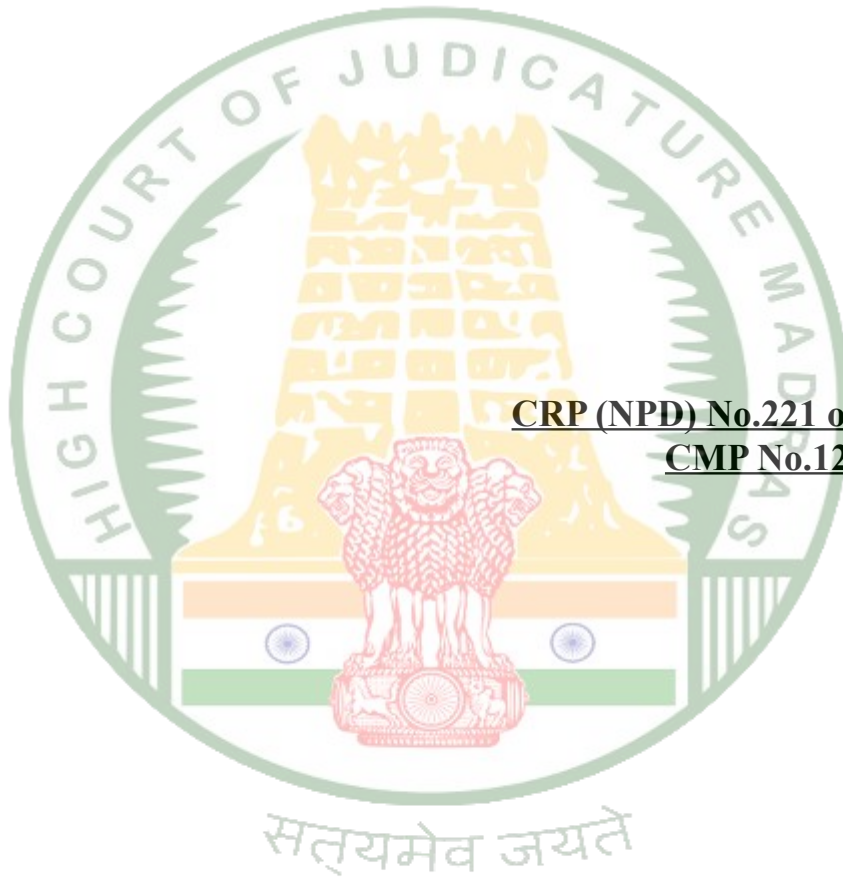
The Sub Judge, Sankari, Salem District



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R.SUBRAMANIAN, J.

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