

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.2306 of 2018 and
CMP No.14379 of 2018

S.Sivaprakasam

.. Petitioner

Vs

R.Natarajan

... Respondent

Prayer: The Civil Revision petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decreetal order passed in IA.No.783 of 2014 in O.S. No.5 of 2009 dated 24.07.2018 on the file of the Principal Sub court at Namakkal in so far as the condition imposed by allowing the present Civil Revision petition.

For Petitioner : Mr.R.Jayaprakash

For Respondent : Mr.P.Mathivanan

ORDER

The challenge in this revision is by the defendant in O.S.No.5 of 2009 to an order made in I.A.No.783 of 2014, condoning the delay of 772 days in filing a petition to set aside the exparte decree, subject to deposit of half of the decree amount. The only ground of challenge is that the condition is onerous.

2. I have heard Mr.R.Jayaprakash, learned counsel appearing for the petitioner and Mr.P.Mathivanan, learned counsel appearing for the respondent.

3. The suit is for recovery of a sum of Rs.4,65,481/-. The trial Court had found that the defendant has given a plausible explanation for the delay and had chosen to condone the delay by imposing a condition. No doubt, it is the discretion of the Court to impose a condition for either condoning the delay or setting aside an exparte decree, at the same time, the condition should not be onerous. A direction to deposit 50 % of the decree amount, in my considered opinion appears to be little too harsh and the

same has to be slightly modified. It is on record that while granting stay of the execution of the decree pending this revision, this Court had directed the petitioner herein/defendant to deposit a sum of Rs.1 lakh to the credit of the suit and the said conditional order has been complied with. I am, therefore of the considered opinion, that the same should be treated as sufficient compliance of the order of the trial Court.

4. In view of the above, the revision stands allowed. The order of the trial Court is set aside. The application in I.A.No.783 of 2014 will stand allowed. The deposit of Rs.1 lakh made pursuant to the order made in the stay petition, is treated as a sufficient compliance. The said sum will be kept in interest yielding fixed deposit for a period of one year. Further, the petitioner shall pay a sum of Rs.10,000/- as costs to the counsel for the respondent appearing in this Court on or before 18.01.2021. Failing payment of cost, the revision will stand dismissed automatically without any further reference to this Court. Now that the delay is condoned. The application filed under Order IX Rule 13 of the Code of Civil Procedure is also allowed. The exparte decree is set aside on the consent of the counsel

for plaintiff to enable early disposal of the suit. The trial Court is directed to dispose of the suit within a period of four months from the date of commencement of physical hearings in the Courts at Namakkal.

5. Consequently, connected miscellaneous petition is also closed.

No costs.

10.12.2020

Note: Time bound order

vum

Index: Yes/No

Speaking order / Non speaking order

To:

The Principal Sub court at Namakkal.

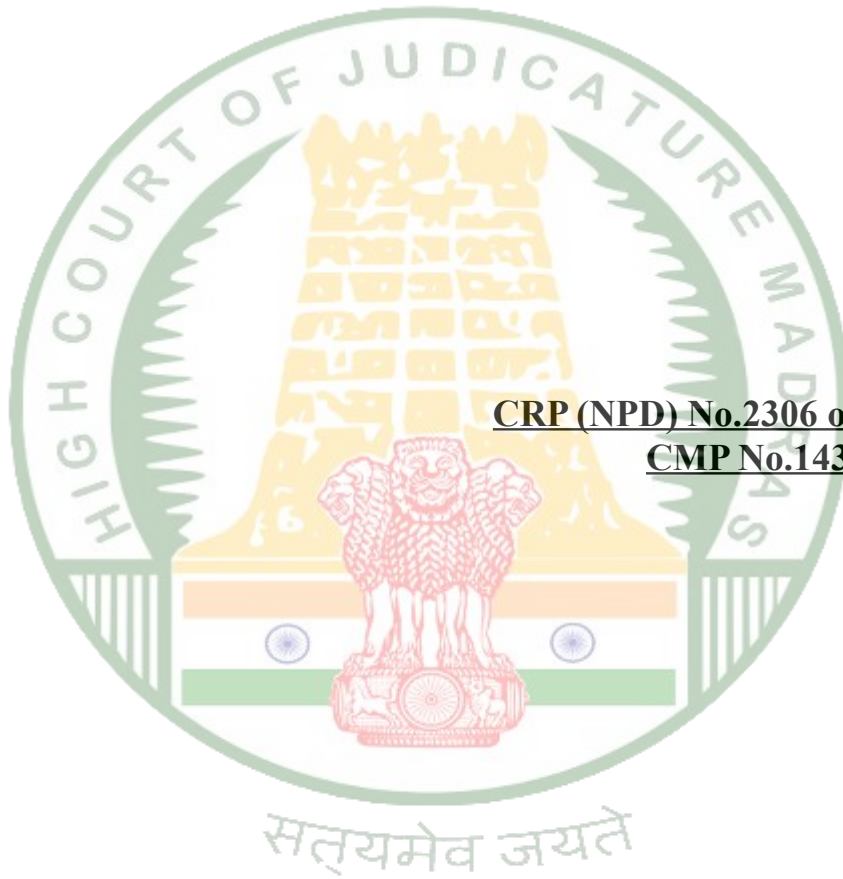


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R.SUBRAMANIAN, J.

vum



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