

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.4343 of 2018

1. Janarthanan
2. Arumugam Petitioners

Vs

1. Amirthavalli
2. Jayabal
3. Govindan
4. The Special Tahsildar (Land Acquisition)
National Highways
Tindivanam. Respondents

Prayer: The Civil Revision petition filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order, dated 06.07.2018 made in IA No.86 of 2018 in O.S.No.317 of 2014 on the file of the II Additional Subordinate Judge, Villupuram.

For Petitioners : Mr.C.Prabakaran

For Respondents : Mrs.R.Meenal (for R1)
Mr.Y.T.Aravind Gosh
Additional Government Pleader
(for R3 to R4)

ORDER

This revision is at the instance of the plaintiffs in O.S.No. 317 of 2014 challenging the dismissal of their application seeking condonation of delay of 68 days in filing an application for restoration of the suit, that was dismissed for default on 30.10.2017.

2. There are two plaintiffs in the suit. The suit was posted for trial on 30.10.2017 and it came to be dismissed. A petition to restore the suit along with an application for condonation of delay of 68 days in filing the petition for restoration was filed in IA No.86 of 2018. In the affidavit filed in support of the application, it is stated that the 1st plaintiff namely Janarthanan who was looking after the suit had suffered Jaundice and he could not attend the Court on the said date.

3. The learned trial Judge on adopting a wooden and dogmatic approach, dismissed the application seeking condonation of delay. I am unable to resist observing that these kind of dismissals will only lead to

pendency of proceedings forever. After all the suit was one for partition. Even if the petition is dismissed, nothing can prevent the plaintiffs from filing another suit by slightly altering the cause of action. The trial Court must be vigilant enough to see the actual object that is sought to be achieved. The plaintiffs do not stand to gain by allowing the suit to be dismissed for default and filing an application for restoration after delay. The Hon'ble Supreme Court and this Court have been repeatedly stressing the need for a liberal approach in cases of delay. I find from the order of the learned Subordinate Judge, Villupuram that the learned Subordinate Judge has adopted a hyper technical approach which ought not to have been adopted in a case where the delay sought to be condoned is only 68 days. He has chosen to observe that the Court is bound to strike a balance between liberal approach and applications with flimsy reasons. It is rather unfortunate that the learned Subordinate Judge had not chosen to strike the correct balance even after observing that the Court is bound to strike a balance.

4. In view of the above, the Civil Revision petition is allowed.

The application in IA No.86 of 2018 will stand allowed. The trial Court is directed to number the application filed under order IX Rule 9 of the Code of Civil Procedure and dispose of the same in accordance with law. No costs.

28.09.2020

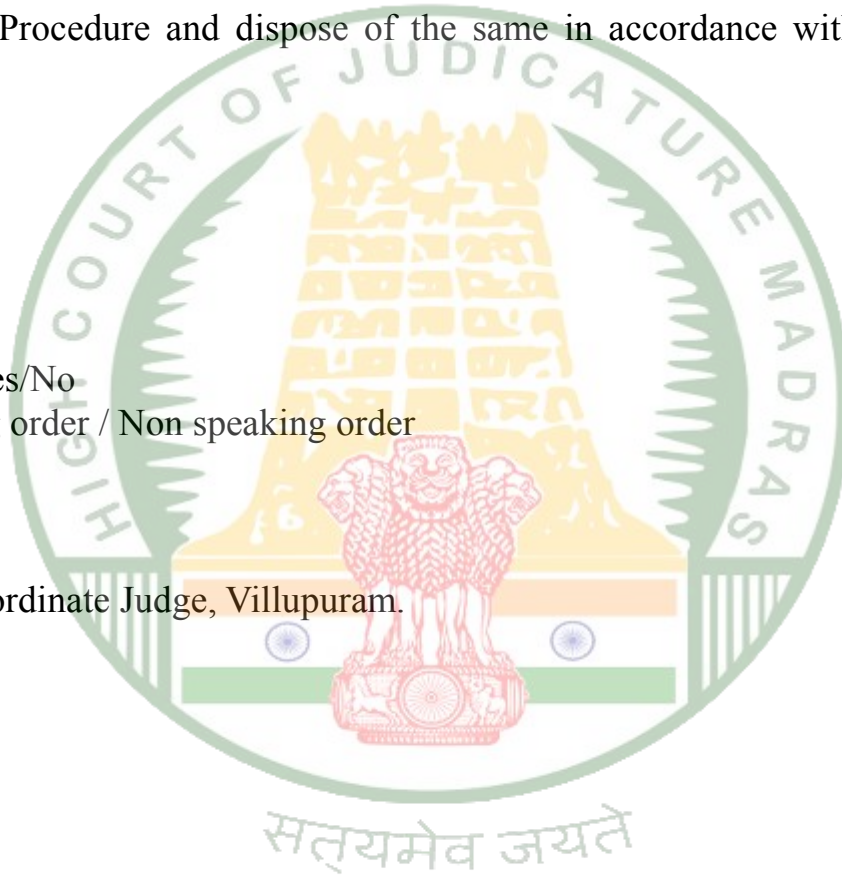
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Index: Yes/No

Speaking order / Non speaking order

To

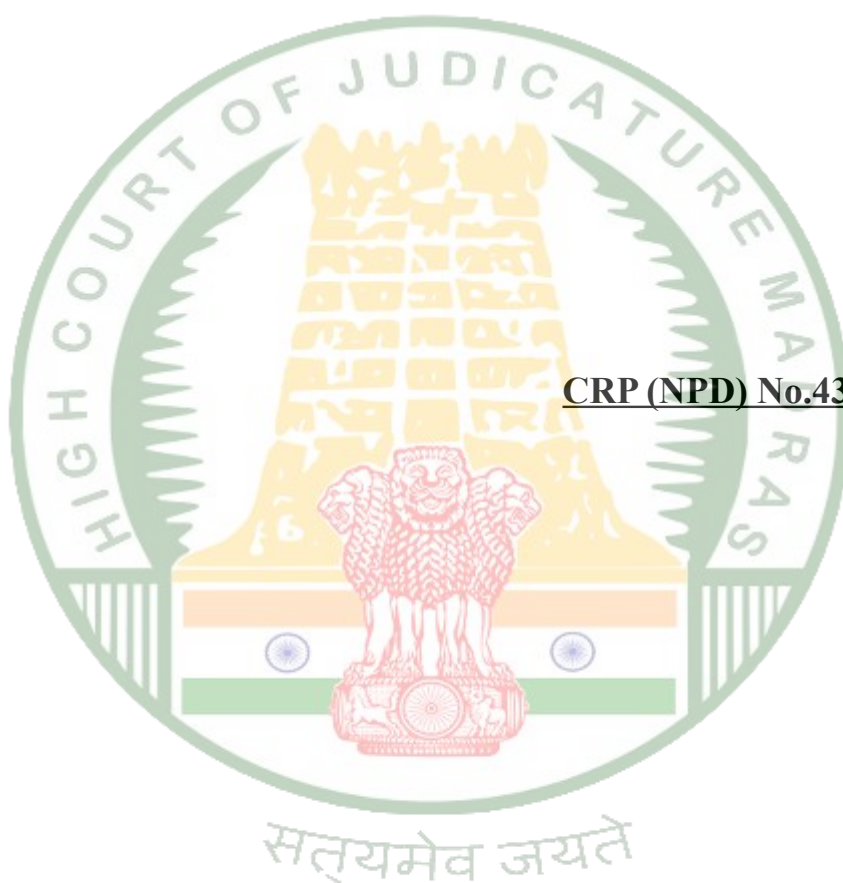
The Subordinate Judge, Villupuram.



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R.SUBRAMANIAN, J.

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