

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(N.P.D).No.2758 of 2010
and M.P.No.1 of 2010

Bama ...Petitioner

Vs

N.Balakrishnan ...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India as against the order and decretal order dated 09.03.2010 in C.M.A.No.11 of 2008, on the file of Principal District Judge, Krishnagiri, confirming the order and decretal order dated 24.03.2008 in I.A.No.398 of 2007 in O.S.No.62 of 2006, on the file of Subordinate Judge, Hosur.

For Petitioner : Mr.V.Lakshminarayanan
for Mr.A.R.M.Arunachalam

For Respondent : notice served-NA

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ORDER

The Civil Revision Petition has been filed as against the order and decretal order dated 09.03.2010 in C.M.A.No.11 of 2008, on the file of

Principal District Judge, Krishnagiri, confirming the order and decretal order dated 24.03.2008 in I.A.No.398 of 2007 in O.S.No.62 of 2006, on the file of Subordinate Judge, Hosur.

2.The petitioner is the defendant in the suit filed by the respondent herein. The respondent filed the suit for specific performance on the strength of the agreement for sale dated 10.12.2001. The petitioner contended that she never executed any agreement for sale in favour of the respondent and the said agreement is sham and nominal. Further, she received the suit summons without any copies of the plaint and other documents. Thereafter, she approached the respondent and he assured that he will not press the suit and withdraw the said suit with some compromise. By believing the said assurance given by the respondent the petitioner did not file any vakalat and written statement in the suit. Thereafter she came to understand that the respondent played fraud and obtained exparte decree on 10.01.2007 as against the petitioner. Therefore, she filed the petition to set aside the exparte decree dated 10.01.2007. Infact, the said agreement was not executed by the petitioner and to obtain a loan, the said agreement was executed in favour of the respondent by her husband. The same has been

utilized to file the present false and frivolous suit as against the petitioner herein. The petition to set aside the exparte order was filed along with the condone delay petition in I.A.No.118 of 2007. The Court below allowed the petition and delay was condoned by imposing cost of Rs.300/-. The said condition was duly complied with and unfortunately failed to dismiss the petition to set aside the exparte decree. It is also noticed that the order was challenged before the Appellate Court and the 1st Appellate Court, without considering the same dismissed the Appeal. It is seen that the petitioner has got case to defend the suit. That apart when the Court below allowed the petition to condone the delay in filing the exparte decree ought to have allow the petition to set aside the exparte decree also.

3.In view of the above, the order dated 09.03.2010 in C.M.A.No.11 of 2008, on the file of Principal District Judge, Krishnagiri, confirming the order and decretal order dated 24.03.2008 in I.A.No.398 of 2007 in O.S.No.62 of 2006, on the file of Subordinate Judge, Hosur, is set aside and this Civil Revision Petition is allowed.

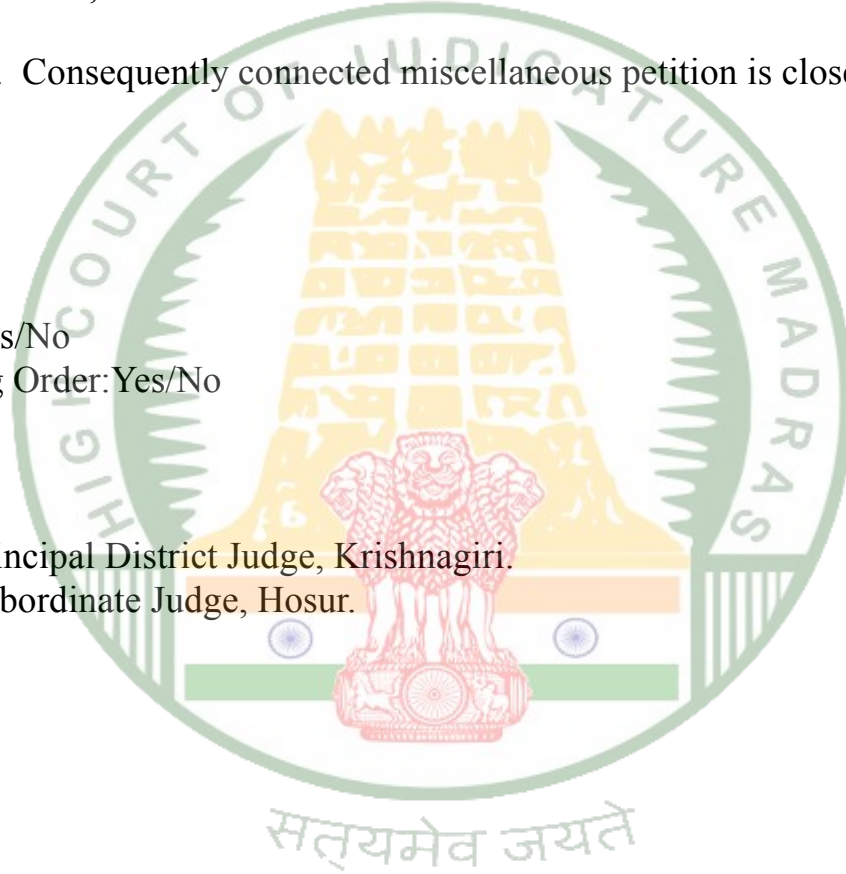
4.Further, the petitioner is directed to file her written statement within a period of 10 days from the date of receipt of a copy of this order.

Thereafter the trial Court is directed to dispose of the suit in O.S.No.62 of 2006 within a period of six months from the date of receipt of a copy of this order and if the petitioner fails to file the written statement within the stipulated time, this Civil Revision Petition stands dismissed automatically. No costs. Consequently connected miscellaneous petition is closed.

05.02.2021

Index:Yes/No
Speaking Order:Yes/No
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To
1.The Principal District Judge, Krishnagiri.
2.The Subordinate Judge, Hosur.

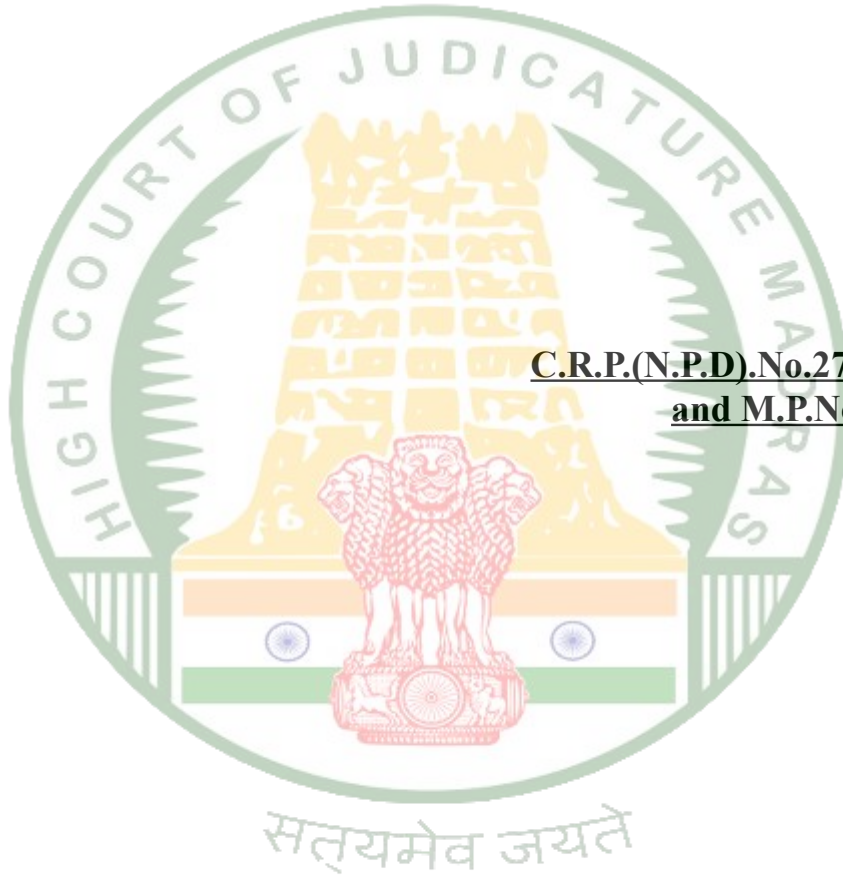


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