

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.(NPD).No.1219 of 2016

and

C.M.P.No.6695 of 2016

Nallasamy

... Petitioner

vs.

1.Tamilselvi

2.Sakthivel

... Respondents

PRAYER: The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, 1908, praying to set-aside the fair and final order dated 05.02.2016 passed in I.A.No.437/2015 in O.S.No.10/2014 on the file of the District Munsif cum Judicial Magistrate Court, Perundurai, Erode District.

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For Petitioner : Mr.J.Titus Enock

For Respondents : Mr.K.T.S.Sivakumar

ORDER

This Civil Revision Petition is directed as against the fair and final order dated 05.02.2016 passed in I.A.No.437 of 2015 in O.S.No.10 of 2014 on the file of the District Munsif-cum-Judicial Magistrate Court, Perundurai, Erode District, thereby allowing the petition to condone the delay of 109 days in filing the application to set aside the ex-parte decree dated 30.01.2015.

2. The petitioner is the plaintiff and the respondents are the second and third defendants in O.S.No.10 of 2014. The petitioner filed a suit for declaration and consequential permanent injunction in respect of suit property, in which after receipt of summons, the respondents failed to appear before the Trial Court. Thereafter, they were set ex-parte and ex-parte decree was passed on 30.01.2015. Thereafter, the petitioner filed R.P.No.10 of 2015 for returning the documents in the suit in which the respondents were served notice. On receipt of the same, the respondents came to know that the petitioner has obtained an ex-parte decree against the respondents on 30.01.2015. Therefore, there was a delay of 109 days in filing the application to set aside the ex-parte decree dated 30.01.2015.

3. Learned counsel for the petitioner would submit that the suit

summons also sent to the same address and in the petition filed for returning of documents in R.P.No.10 of 2015 also notice sent to the same address. Therefore, after receipt of the suit summons, they wantonly failed to appear before the Trial Court and set them as ex-parte.

4. On perusal of the records shows that the petitioner is the father of the first defendant and the respondents are the daughter and son of the first defendant in O.S.No.10 of 2014. The respondents also made allegation that the first defendant namely their father was addicted to alcohol and never evinced in the welfare of the family. He did not provide any money to run their family. Therefore, they have to contest the suit and it has to be decided on merits.

5. In view of the above, the Court below allowed the petition in I.A.No.437 of 2015 in O.S.No.10 of 2014 dated 05.02.2016 to condone the delay of 109 days in filing application to set aside the ex-parte decree dated 30.01.2015. Therefore, this Court finds no irregularity or infirmity in the order passed by the Court below.

6. Accordingly, the civil revision petition is dismissed. The Trial

Court is directed to dispose the suit in O.S.No.10 of 2014 on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order. The respondents are directed to file their written statement before the Trial Court within a period of two weeks from the date of receipt of a copy of this order. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

09.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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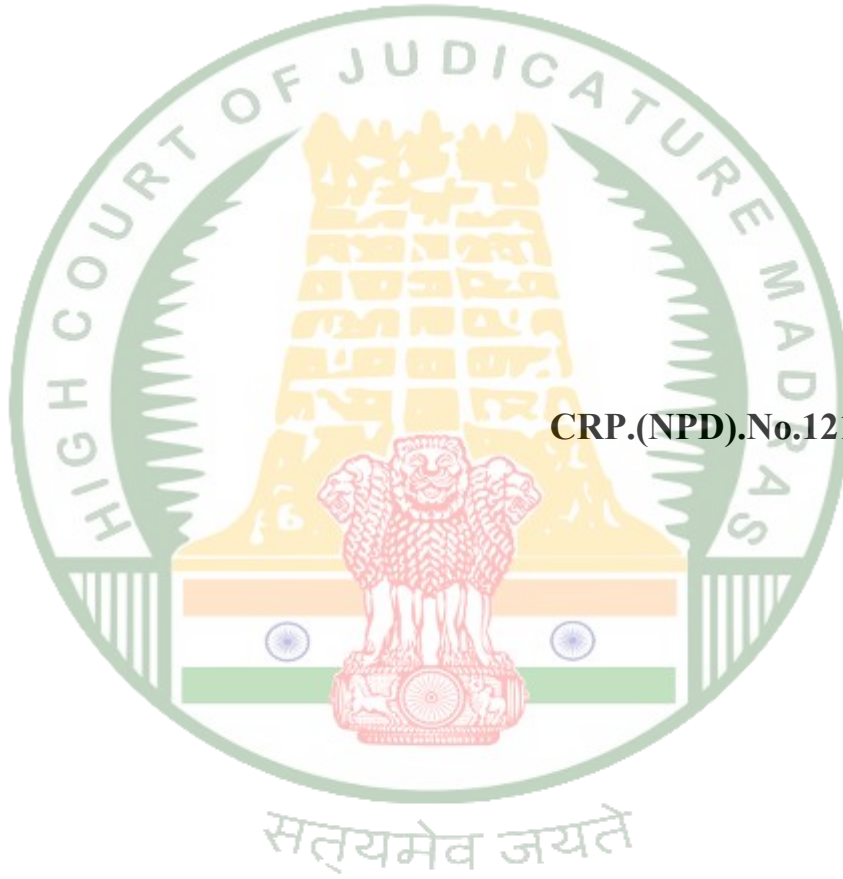
To

The District Munsif-cum-Judicial Magistrate Court,
Perundurai, Erode District.

सत्यमेव जयते
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G.K.ILANTHIRAIYAN,J.

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