

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM

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

CRP.NPD.No.634 of 2016

P.Manikandan

... Petitioner

Vs.

G.Madanlal

... Respondent

PRAYER: The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to allow the above Civil Revision Petition by setting aside the order dated 09.12.2015 passed in I.A.No.329 of 2014 in O.S.No.91 of 2012 on the file of the Sub-Court, Udhagamandalam.

For Petitioner : Mr.S.K.Rakhunathan

For Respondent : No Appearance

ORDER

This Civil Revision Petition is directed as against the order and decretal order passed in I.A.No.329 of 2014 in O.S.No.91 of 2012 dated 09.12.2015 on the file of the Sub-Court, Udhagamandalam thereby, dismissing the petition to condone the delay in filing the application to set aside the ex-parte decree.

2. The petitioner is the defendant in the suit filed by the respondent herein for recovery of money. The petitioner after engaging counsel, failed to appear before the trial Court and also did not file any written statement. Therefore, he was set ex-parte and the suit was decreed. In pursuant to the decree, Execution Petition was filed before the Judicial Magistrate-cum-Munsif Court, Mannarghat, Kerala, after transmitting the decree to the said Court. Since, the petitioner is residing within the jurisdiction of the Judicial Magistrate-cum-Munsif Court, Mannarghat, Kerala. In the said Execution Proceedings, the petitioner received notice and thereafter, filed a petition to set aside the ex-parte decree with a delay of 314 days in filing the application to set aside the ex-parte decree. It is also to be noted that the respondent also initiated proceedings under Section 138 of the Negotiable Instruments Act on the file of the Judicial Magistrate, Udhagamandalam in C.C.No.191 of 2009. The petitioner continuously appeared before the said proceedings and after examination of P.W.1, he also started to make few payments after prolonged delay and thereafter, failed to pay the amount. In fact, the petitioner also failed to mark any document to prove the same.

3. On a perusal of the affidavit filed in support of the condone delay petition, the petitioner did not state any reason for the delay and he has simply mentioned about the proceedings. Further, he stated that the counsel who appeared on behalf of the petitioner failed to inform him about the pendency of the suit as well as the stage of the suit, therefore, he was set ex-parte. In fact, the same counsel is looking after his criminal case in C.C.No.191 of 2009 on the file of the Judicial Magistrate, Udthagamandalam. Therefore, he got back the bundle and engaged another counsel to appear in C.C.No.191 of 2009. When the petitioner was able to get back his bundle in criminal case, he did not take any steps to get back his civil Court case bundle from the counsel who appeared on his behalf in the civil case. Therefore, there is absolutely no sufficient cause stated by the petitioner to condone the delay of 314 days. That apart, the suit is for recovery of money and only to drag on the proceedings the petitioner wantonly did not appear before the trial Court and now only to drag on the proceedings filed the petition to set aside the ex-parte decree with the condone delay petition. Therefore, this Court finds no irregularity or

infirmity in the order passed by the Court below.

G.K.ILANTHIRAIYAN,J.

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4. Accordingly, this Civil Revision Petition is dismissed. No costs.

12.02.2021

Speaking/Non-speaking order

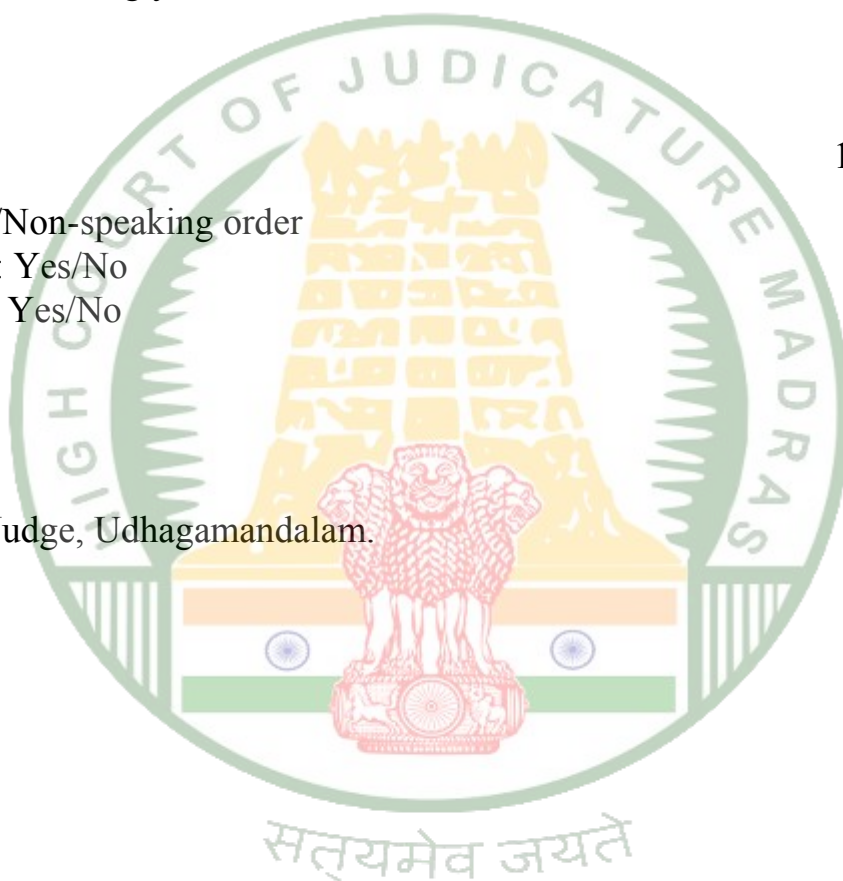
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Internet : Yes/No

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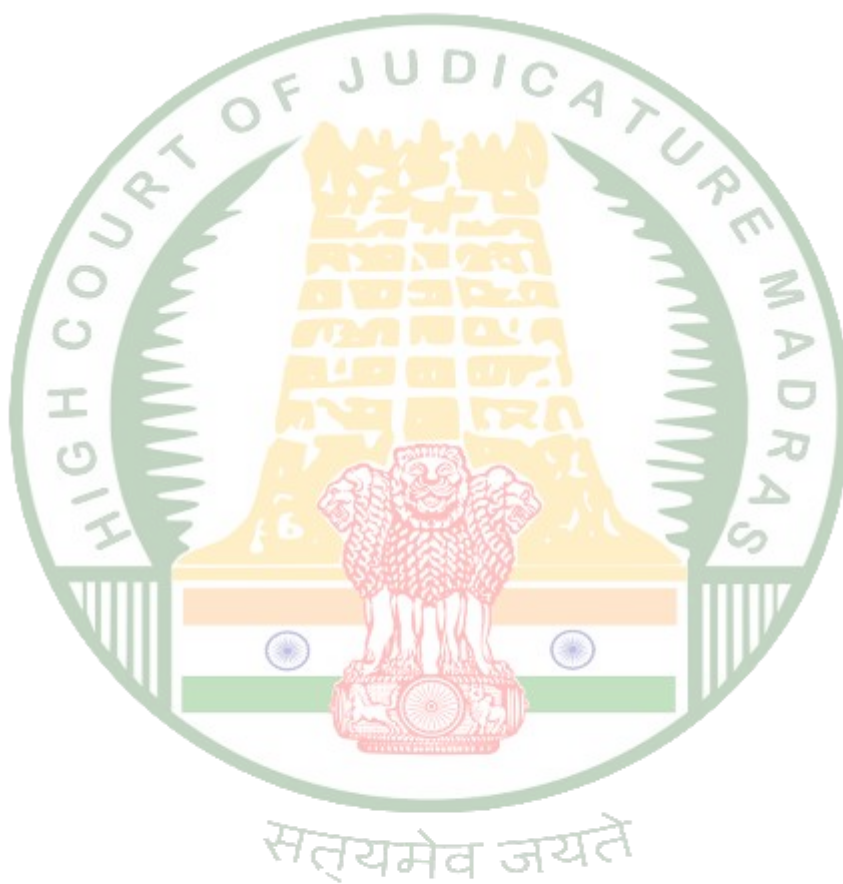
To

The Sub Judge, Udthagamandalam.



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