

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(NPD)No.2565 of 2018
and CMP No.15483 of 2018

A. Ganapathi@ Alagesan

.... Petitioner

Vs

T.Subramaniam

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prayed to set aside the fair and decreetal order dated 07.02.2018 passed in I.A.No.471 of 2017 in O.S.No.108 of 2013 on the file of Sub Court, Panruti and allow the same.

For Petitioner : Mr.K.A.Ravindran

For Respondent : Mr.R.Muralidharan

ORDER

Challenging the fair and final order passed in I.A.No.471 of 2017 in O.S.No.108 of 2013 on the file of Sub Court, Panruti, the defendant has filed the above Civil Revision Petition.

2. I.A.No.471 of 2017 was filed by the revision petitioner/defendant to set aside the exparte order passed by the Court below on 09.01.2014. The revision petitioner is the sole defendant in the suit. The suit in O.S.No.108 of 2013 was filed for recovery of a sum of Rs.1,43,024/-.

3. According to the learned counsel for the petitioner/defendant, there was a delay of 1158 days in filing the application to set aside the exparte order.

4.The trial Court, taking into consideration the case of both the parties, dismissed the application, finding that the reasoning given by the defendant, cannot be accepted. Aggrieved by the said order, the defendant has preferred the present revision.

5.When the matter is taken up for hearing today, learned counsel for the revision petitioner/defendant has made a suggestion that he is ready and willing to deposit the entire outstanding amount and he also submits that since he has not produced any evidence for the delay, the application was not considered. It is an admitted fact that there is an inordinate delay of 1158 days in filing the

petition to set aside the exparte order and he has not stated any reason for the delay, however, submits that in the interest of justice the delay may be condoned and the suit may be restored to file.

6.Since the defendant had not filed written statement, the suit was decreed exparte. However, learned counsel for the revision petitioner petitioner/defendant submits that he has filed the written statement along with delay condonation application.

7.Per contra, learned counsel for the respondent/plaintiff submits that there is an inordinate delay of 1158 days and the revision petitioner/defendant has not produced any document explaining the delay and in view of the failure on the part of the defendant, the Court below has rightly dismissed the application filed to condone the delay and now that the plaintiff has filed an execution petition and the same is pending and this civil revision petition has been filed only for the purpose of gaining further time and nothing more than that and therefore, he submits that there is no merit in petition and the civil revision petition is liable to be dismissed.

8.Heard learned counsel for the petitioner and learned counsel for the respondent.

9.Upon perusal of the records of the court below, it is seen that since the defendant has not filed written statement, the suit was decreed exparte on 09.01.2014. Subsequently, the revision petitioner/defendant took more than 1158 days to file a petition to set aside the exparte order. The defendant has not produced any document to prove the inordinate delay.

10.This court is of no doubt that there is no material available to accept the contention of the revision petitioner/defendant. Subsequent to the passing of exparte order, the respondent/plaintiff has also filed an execution petition and the same is pending and no progress has been made so far and ultimately, the plaintiff has lost enough time in the present litigation.

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11.Taking into consideration all these aspects, this court is of the view that it will be appropriate to direct the revision petitioner/defendant to deposit

the entire amount of Rs.1,43,024/-(Rupees one lakh forty three thousand twenty four only) within a time frame as fixed by this Court.

12.The learned counsel for the respondent/plaintiff has fairly accepted the suggestion made by this Court.

13.Since the suit filed by the plaintiff was decreed and that the defendant had stated that he was suffering from illness and was not able to move about, I am of the considered view that in the interest of justice, the defendant could have been given an opportunity.

14. In these circumstances, the fair and decreetal order passed in I.A.No.471 of 2017 in O.S.No.108 of 2013 are set aside and the delay of 1158 days in filing the application to set aside the exparte order is condoned on condition that the petitioner/defendant deposits the entire amount of Rs.1,43,024/-(Rupees one lakh forty three thousand twenty four only) before the Court below in O.S.No.108 of 2013 on or before 22.02.2021. On such deposit, the suit may be restored to file and the learned Sub Judge, Panruti is directed to

dispose of the suit in O.S.No.108 of 2013 within a period of three months from the date of receipt of a copy of this order.

15.With these observations, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

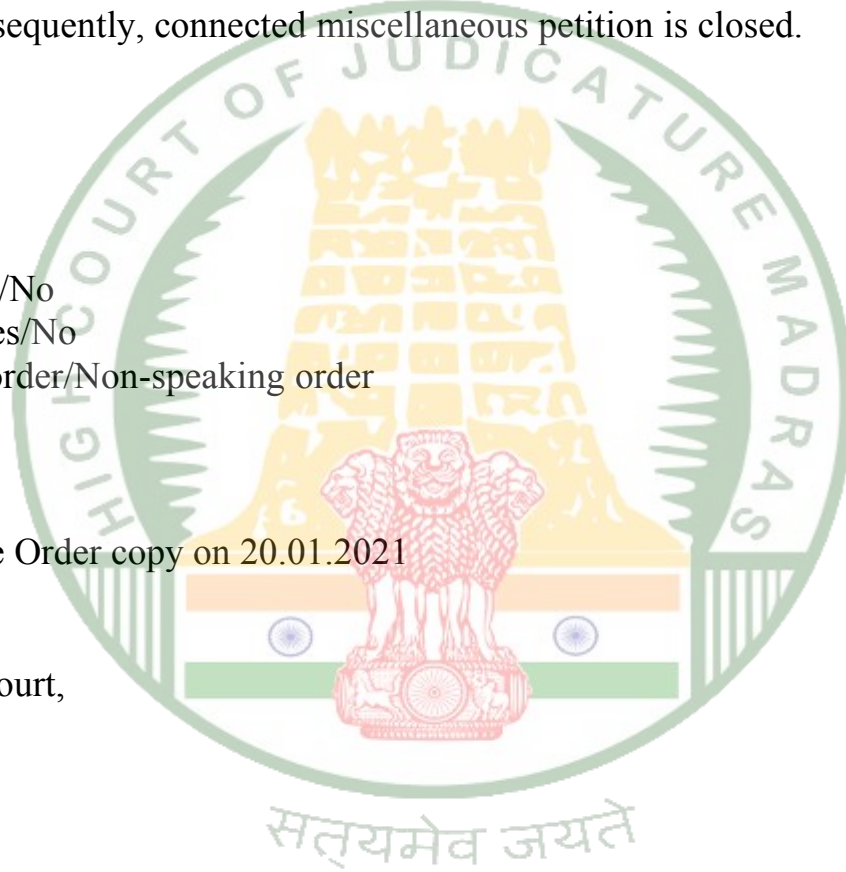
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Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order

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Note: Issue Order copy on 20.01.2021

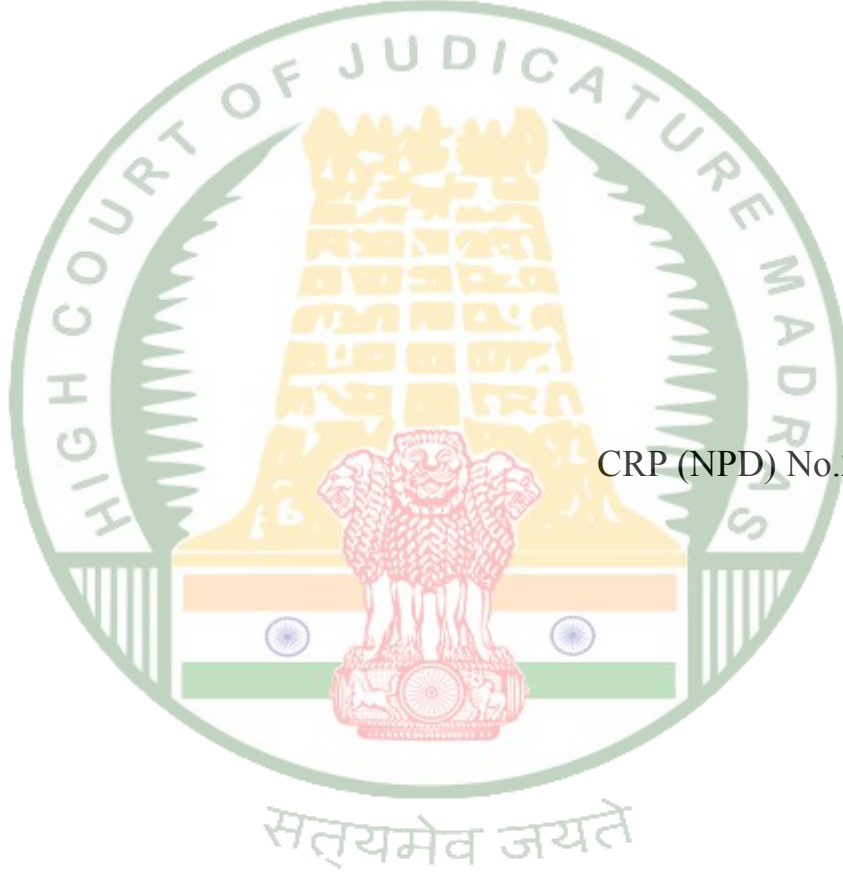
To:
The Sub Court,
Panruti.



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KRISHNAN RAMASAMY,J.

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