

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(NPD) No.1785 of 2021
and C.M.P.No.13855 of 2021**

Gomathi ...Petitioner

Vs.

Madhammal ...Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order fair and decreetal order dated 01.04.2021 made in I.A.No.777 of 2018 in O.S.No.234 of 2017 on the file of the District Munsif Court, Omalur.

For Petitioner : Mr.C.Prabakaran

ORDER

This Civil Revision Petition is filed to set aside the order dated 01.04.2021 in I.A.No. 777 of 2018 in O.S.No.234 of 2017 passed by the learned Muncif, Omalur.

2.The learned counsel for the petitioner submitted that the petitioner filed a suit in O.S.No.234 of 2017 seeking the relief of permanent injunction.

During the pendency of the suit, the respondent remained *exparte* and *exparte* decree was passed on 22.02.2018.

3. Against the *exparte* decree, the respondent filed an application in I.A.No.777 of 2018 to set aside the *exparte* decree along with a petition to condone delay and that the said petition was allowed on 01.04.2021. Against the order of allowing I.A.No.777 of 2018, this Civil Revision petition is preferred.

4.The learned counsel for the petitioner further submitted that the delay was strongly opposed by the petitioner and after passing of the *exparte* decree, the respondent violated the decree and therefore the respondent initiated the contempt of Court proceedings before the learned District Munsif Court, Omalur and also a police complaint was given. Therefore, he prayed for setting aside the order of the learned District Munsif Court, Omalur.

5.Considered the submissions made by the learned counsel for the petitioner and perused the records.

6.It is seen from the adjudication notes sheet of District Munsif Court of Omalur that enquiry was conducted in I.A.No.777 of 2018 on 10.03.2021 and both the parties were heard.

7.A conditional order was passed 25.03.2021 to allow the petition in I.A.No.777 of 2018 with cost of Rs.2000/-, directly payable to the respondent on or before 01.04.2021, failing compliance, the petition, shall stand automatically dismissed. The matter was again called on 01.04.2021, the counsel for the respondent filed a memo stating that the costs of Rs.2,000/- was paid to the petitioner and since the conditional order was complied the petition in I.A.No.777 of 2018 was allowed. The petitioner has also received the costs amount.

8.When that be the case, it is not open to the petitioner to challenge that order dated 01.04.2021 in I.A.No.777 of 2018. That apart it appears that this petition was filed, to set aside the *exparte* decree along with condone delay petition. Therefore, this Court is of the considered view that the respondent should have an opportunity to contest the suit on merits

before the trial Court and this Court does not wants to interfere with the order dated 01.04.2021 in I.A.No.777 of 2018 in O.S.No.234 of 2017 passed by the learned District Muncif, Omalur.

9.In the result, this Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Jd/Jer

02.09.2021

Index:Yes/No

Internet:Yes/No

Speaking Order: Yes/No

To

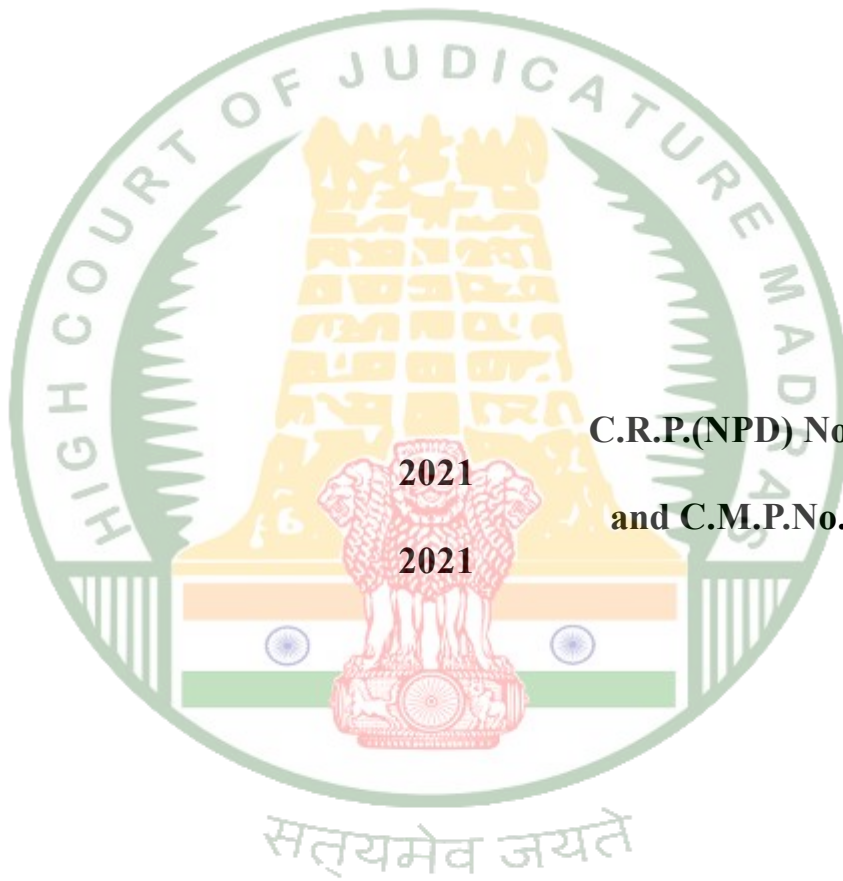
The District Munsif Court, Omalur.

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C.R.P.(N.P.D).No.1785 of 2021

G.CHANDRASEKHARAN.J,

Jer



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