

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2021

CORAM

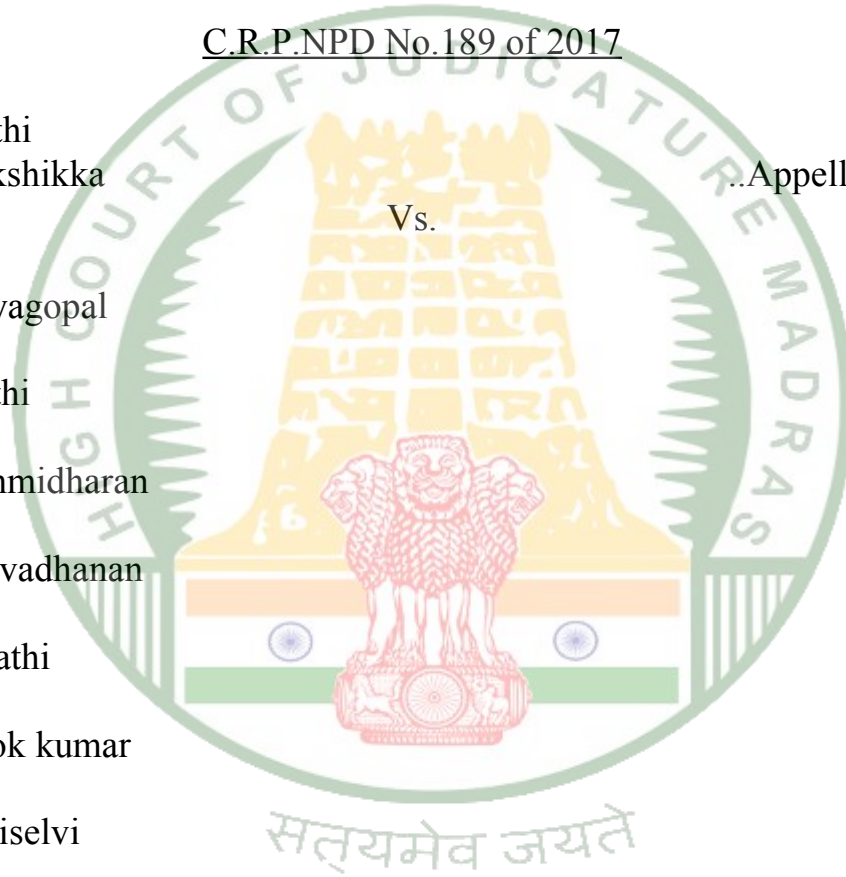
**THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM**

C.R.P.NPD No.189 of 2017

1.A.Swathi  
2.A.Deekshikka ...Appellants

Vs.

1.P.K.Jayagopal  
2.J.Shanthi  
3.J.Lakshmidharan  
4.J.Thiruvadhanan  
5.C.Sumathi  
6.K.Ashok kumar  
7.A.Kalaiselvi  
8.N.Nirmala  
9.N.Prabhuram  
10.N.Ramesh  
11.A.Sairam  
12.P.Loganathan



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13.A.S.Karthikeyan

14.L.Kiruthika Nandini

15.T.Subha

..Respondents

**Prayer :** Civil Revision Petition filed under Section 115 of CPC, against the fair and decreetal order dated 21.11.2016 made in I.A.No.84 of 2015 in O.S.No.192 of 2012 on the file of the first Additional District Court, Namakkal.

For Appellants : N.Manokaran

For Respondents : Mr.S.Mayilnathan for RR1 to 4, 14 & 15  
: No appearance for RR5 to 11  
: Batta due for RR12 & 13

JUDGMENT

The civil revision petition is filed to set aside the fair and decreetal order dated 21.11.2016 made in I.A.No.84 of 2015 in O.S.No.192 of 2012.

2. The suit was instituted for partition and the same was dismissed by the Trial Court for default on 03.02.2015. An interlocutory application in I.A.No.84 of 2015 was filed by the appellants to condone the delay of 89 days in filing the petition to set aside the exparte order.

3. The contention of the learned counsel for the appellants is that the interlocutory application filed to set aside the exparte order was numbered as I.A.No.85 of 2015 and both the applications to condone the delay and to set aside the exparte order were dismissed. Against I.A.No.84 of 2015, C.R.P.No.189 of 2017 is filed and against I.A.No.85 of 2015, C.M.A.No.108 of 2017 is filed.

4. The suit was instituted for partition. Thus, the rights of the parties are to be crystalised. On mere technical grounds, the rights of the parties cannot be declined. This Court is of the considered opinion that the delay of 89 days in filing the petition to set aside the exparte order ought have been condoned by the Trial Court and the suit is to be decided on merits and by affording opportunity to the parties concerned. the suit sought to be tried and disposed of on merits except on exceptional circumstances where the parties have intentionally prolonged and protracted the litigation.

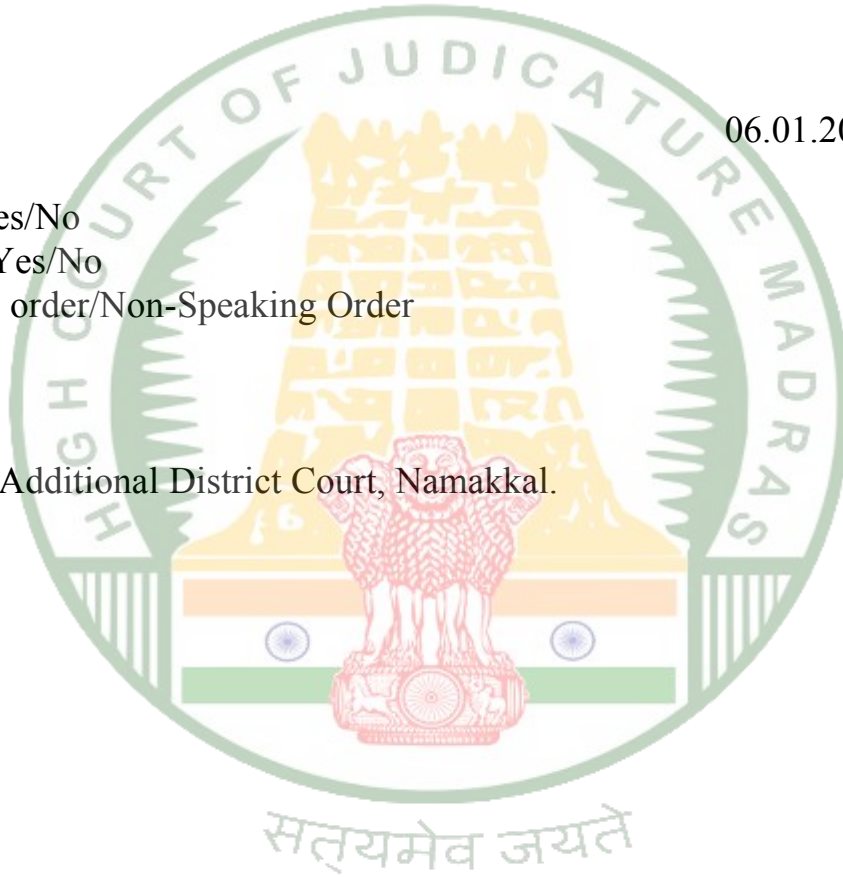
5. In the present case, immediately after the exparte order, the appellants filed an interlocutory application to condone the delay of 89

days and filed another application to set aside the exparte order. This being the factum, the fair and decreetal order passed on 21.11.2006 in I.A.No..84 of 2015, is set aside and subsequently, C.R.P.NPD.No.189 of 2017 stands allowed. No costs.

06.01.2021

Index: Yes/No  
Internet: Yes/No  
Speaking order/Non-Speaking Order  
gsk

To  
The first Additional District Court, Namakkal.

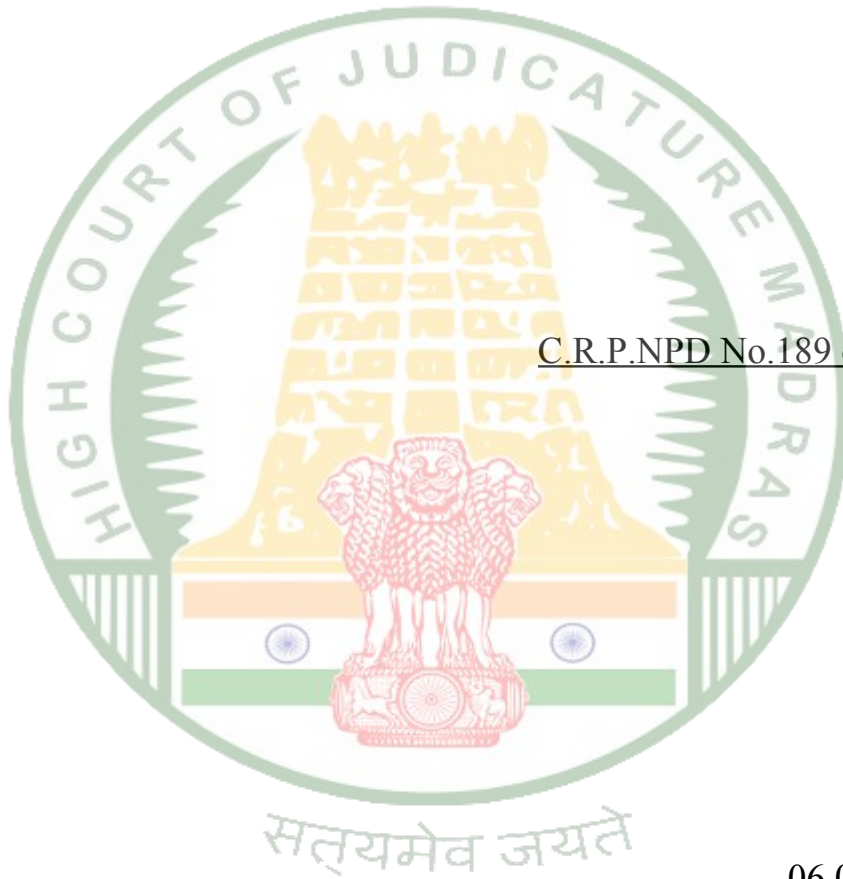


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C.R.P.NPD No.189 of 2017

S.M.SUBRAMANIAM, J.

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