

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(N.P.D).No.3705 of 2017

Mayavel

...Petitioner

Vs

Pachaiammal

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order in I.A.No.473 of 2009 in O.S.No.298 of 1996 dated 08.09.2010 on the file of the District Munsif cum Judicial Magistrate, Tittagudi.

For Petitioner : Mr.G.Surya Narayanan

For Respondent : Mr.D.Veerasekaran

ORDER

This Civil Revision Petition has been filed as against the order dated 08.09.2010 in I.A.No.473 of 2009 in O.S.No.298 of 1996 on the file of the District Munsif cum Judicial Magistrate, Tittagudi, thereby dismissed

the petition to condone the delay in filing the setting aside exparte decree.

2.The respondent herein is the plaintiff. The petitioner herein is the defendant. The respondent filed a suit for declaration and injunction. The petitioner appeared before the trial Court and also filed written statement on 18.06.1990. Thereafter, he failed to appear before the trial Court and as such an exparte decree was passed on 11.12.1997. Therefore, the petitioner filed a petition to set aside the exparte decree with a petition to condone the delay of 2951 days.

3.On perusal of the affidavit filed in support of condone delay petition revealed that the petitioner engaged counsel to appear on behalf of him before the trial Court. On his instruction, he also filed the written statement. Thereafter, he failed to appear before the trial Court and as such he was set ex parte on 11.12.1997. Immediately he visited his advocate's office and came to understand that the suit was decreed in favour of the respondent herein. Thereafter, he went to Bangalore and there he suffered with his mental illness and as such he was unconscious for the period of 7 years. His mental illness was cured and he met his counsel. He advised him to file a petition to set aside the exparte decree and as such there was a delay

of 2951 days in filing the petition to set aside the exparte decree. The petitioner was examined as P.W.1 in the condone delay petition and to corroborate with his evidence, P.W.2 was examined.

4.On perusal of the evidences of P.Ws.1 and 2 there was major contradictions between them and though the petitioner took a stand that he was mentally ill for the past 7 years and thereafter, he was cured and met his Advocate, no peace of evidence has been produced before the Court below to substantiate the same. Infact, P.W.2 also failed to support the case of the petitioner. Therefore, the Court below has rightly dismissed the petition and this Court does not find any infirmity or irregularity in the order dated 08.09.2010 in I.A.No.473 of 2009 in O.S.No.298 of 1996 on the file of the District Munsif cum Judicial Magistrate, Tittagudi.

5.Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

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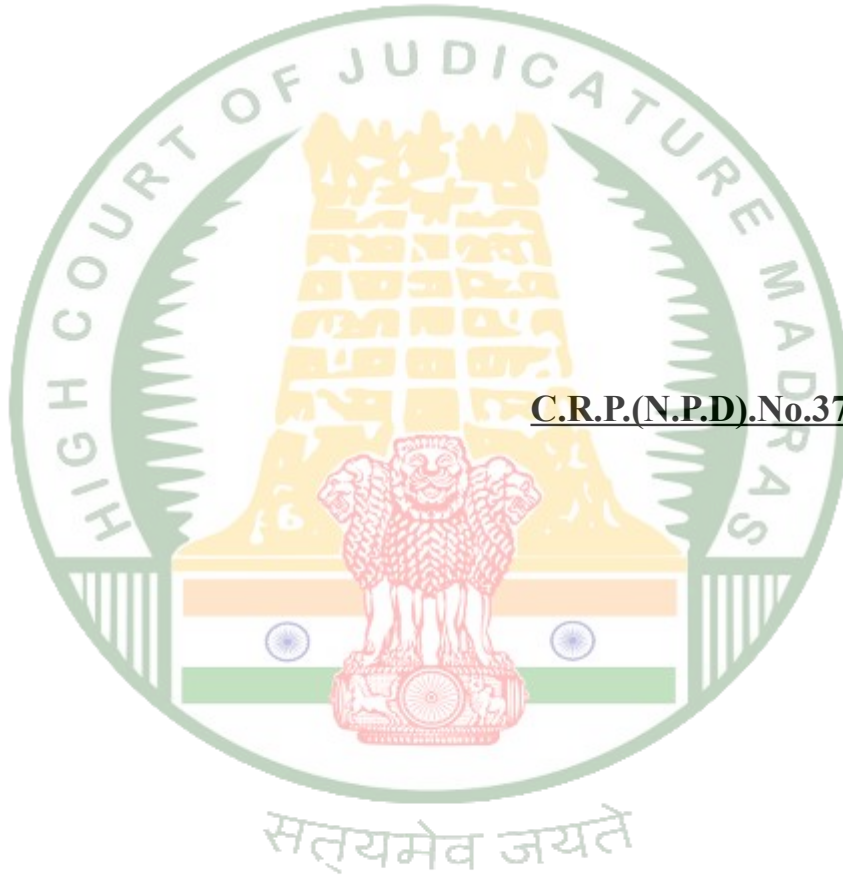
16.02.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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G.K.ILANTHIRAIYAN.J,

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