

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2021

C O R A M

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P(NPD).No.4386 of 2017

1.Thamaraiselvi

2.Govindaraj

... Petitioners

Vs.

Pakkirisamy

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed by the learned District Munsif, Nagapattinam in I.A.No.382 of 2017 in O.S.No.299 of 2013 dated 15.09.2017.

For Petitioners : Mr.A.S.Balaji

For Respondent : Mr.S.Parthasarathy

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 15.09.2017 passed in I.A.No.382 of 2017 in O.S.No.299 of 2013 on the file of the learned District Munsif, Nagapattinam, and thereby dismissing the petition to condone the delay in petition to set aside the ex-parte decree.

2. The petitioners are the plaintiffs in the suit and the respondent is the defendant in the suit filed by the petitioners for declaration declaring the settlement deed executed in favour of the respondent is null and void. While pending the suit, the petitioners were absent and were set ex-parte. Subsequently, they filed a petition seeking to set aside the ex parte order and the same was allowed. Thereafter, the was examined as P.W.1 and when the matter was posted for cross-examination by the petitioners herein, the petitioners failed to cross-examine the respondent on several occasions. Therefore, again they were set ex-parte and an ex-parte decree was passed. Thereafter, the petitioners came to understand that ex-parte decree was passed against them and hence, they filed a petition to set aside the ex-parte decree with a condone delay of 427 days.

3. On perusal of the affidavit filed in support of the condone delay

petition reveals that the counsel engaged by them had failed to inform them about the progress of the case and when the matter was posted for trial. It is also revealed that another counsel who reside in Nagapattinam also joined through Vakalath. However, they failed to cross-examine and they were set exparte. The 1st petitioner and the respondent are none other than sister and brother. Therefore, the petitioners may be given one more opportunity to defend the suit filed by the respondent herein.

4. Considering the same, the order dated 15.09.2017 passed in I.A.No.382 of 2017 in O.S.No.299 of 2013 on the file of the learned District Munsif, Nagapattinam, is set aside and the Civil Revision Petition is allowed subject to the petitioners paying a sum of Rs.5,000/- to the respondent directly within a period of two weeks from the date of receipt of a copy of this order, failing which, the order passed by this Court shall stand automatically cancelled. Further, the trial Court is directed to dispose of the case within a period of three months. No order as to costs.

10.03.2021

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G.K.ILANTHIRAIYAN, J.

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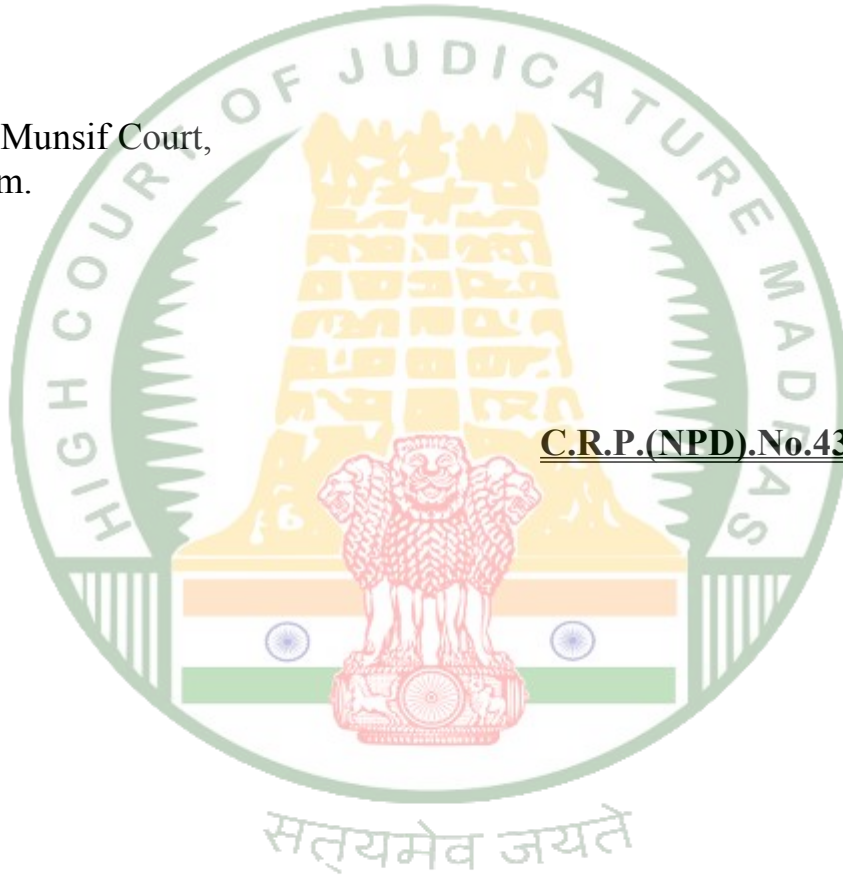
Index:Yes/No

Internet:Yes

Speaking Order/Non Speaking Order

To

The District Munsif Court,
Nagapattinam.



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