

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD)No.3185 of 2018
and C.M.P.No.18198 of 2018

1. Selvasubramanian
2. Palanidurai

... Petitioners

Vs.

The Branch Manager,
Indian Bank,
Perugavazhndan Village,
Mannargudi Taluk,
Tiruvarur District.

... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 20.02.2018 passed in I.A.No.243 of 2016 in O.S.No.36 of 2013 on the file of the Sub Court, Mannargudi.

For Petitioners : Mr.D.Veerasekaran

For Respondent : Ms.S.R.Sumathy

ORDER

This Civil Revision Petition is directed as against order dated 20.02.2018 passed by the learned Subordinate Judge, Mannargudi in I.A.No.243 of 2016 in O.S.No.36 of 2013, thereby dismissing the petition to condone the delay of 642 days in filing the petition to set aside the exparte decree.

2. The petitioners are the defendants and the respondent is the plaintiff. The respondent filed suit in O.S.No.36 of 2013 for recovery of money as against the petitioners. After filing the written statement by the petitioners herein, the trial was commenced. When P.W.1 was in box for cross-examination, the petitioners failed to appear before the Court below and did not cross-examine P.W.1. Therefore, they were set exparte and exparte judgment and decree passed on 10.12.2014. Hence, the petitioners filed petition to set aside the exparte decree along with the condone delay petition in I.A.No.243 of 2016.

3. On perusal of the affidavit filed in support of the condone delay petition, the first petitioner herein had admitted in various hospitals for his heart ailments. In fact, the first petitioner was examined as P.W.1 and in support of his contention P.W.2 was also examined and marked Ex.P.1 to Ex.P.7 and proved that he was admitted in various hospitals. Therefore, he could not be able to instruct his counsel to cross-examine P.W.1 in the main suit. Further the Court below dismissed the petition for reason that the petitioners failed to explain each and every day delay of 642 days. It is seen that the suit is for recovery of money. Therefore, this Court feels that the petitioners may be given one more opportunity to defend their case.

4. In view of the above discussions, the order dated 20.02.2018 passed by the learned Subordinate Judge, Mannargudi in I.A.No.243 of 2016 in O.S.No.36 of 2013 is hereby set aside on condition that, the petitioners shall pay a sum of Rs.5,000/- (Rupees five thousand only) to the respondent, 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. On such payment, the trial Court is directed to restore the suit and dispose the same within a period of six months thereafter.

5. With the above directions, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to cost.

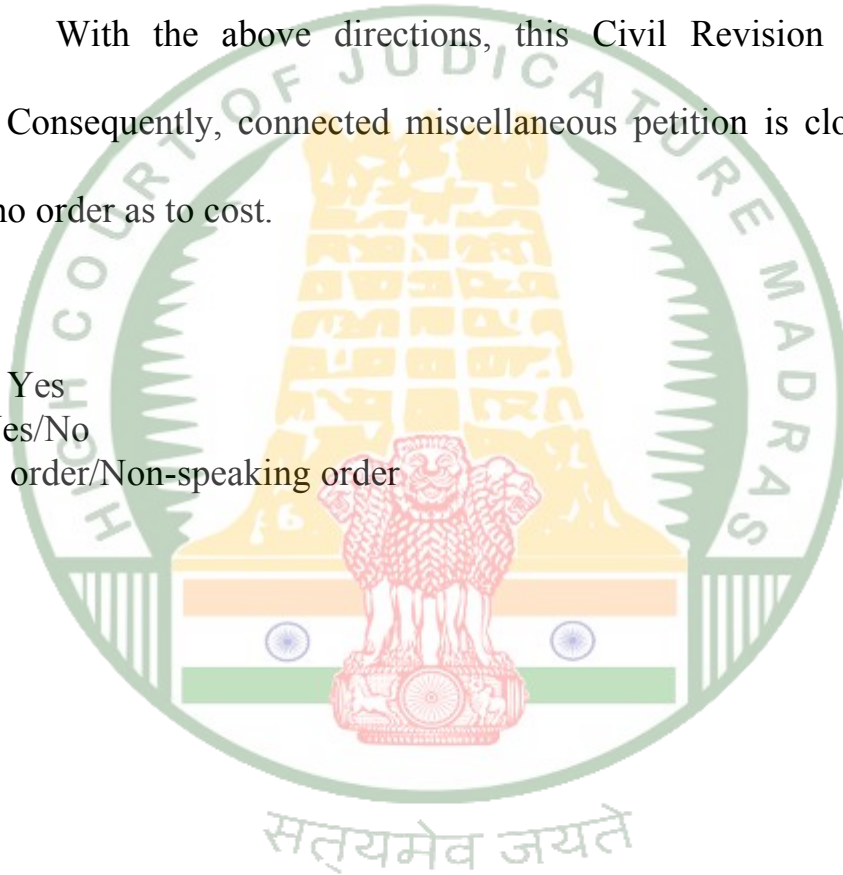
01.07.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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To

1. The Subordinate Judge,
Mannargudi.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

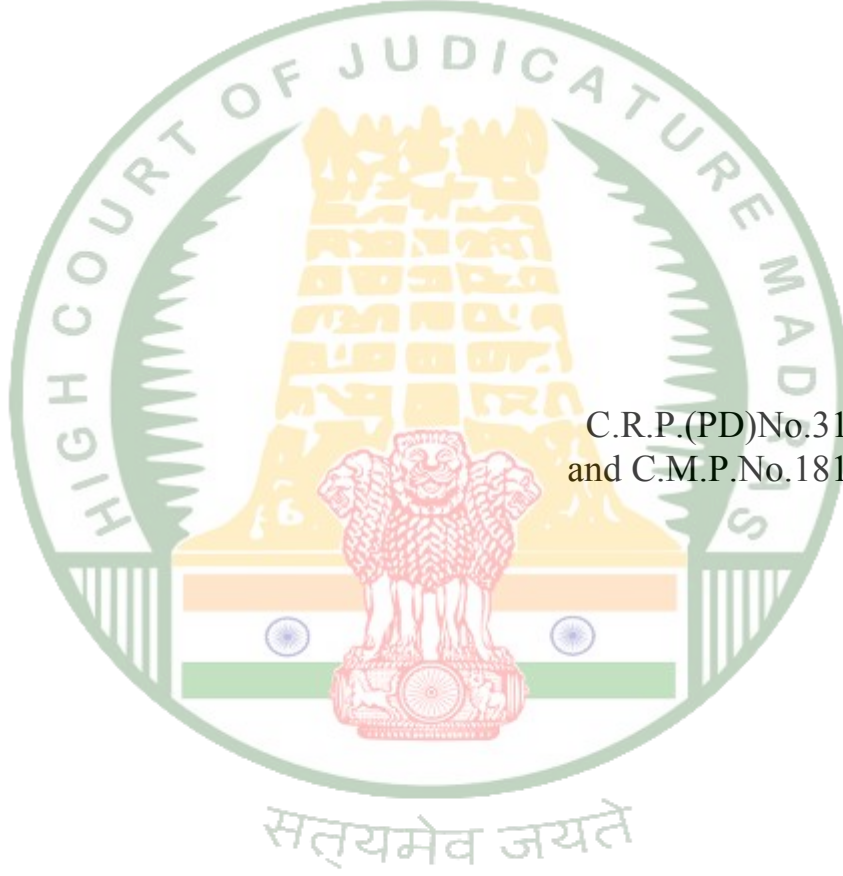


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G.K.ILANTHIRAIYAN, J.

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