

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD) No.3880 of 2018
and C.M.P.No.21587 of 2018

N.Agatheeswaran

... Petitioner

Vs

P.Mohan

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 09.02.2018 made in I.A.No.670 of 2014 in O.S.No.1367 of 2010 on the file of the learned Principal District Munsif Court, Coimbatore.

For Petitioner : Mr.A.Deivasigamani
for M/s.S.Saravanan

For Respondent : Mr.R.Bharath Kumar

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 09.02.2018 made in I.A.No.670 of 2014 in O.S.No.1367 of 2010 on the file of the learned Principal District Munsif Court, Coimbatore, thereby dismissing the petition to condone the delay in filing the petition to set aside the exparte decree.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed a suit for permanent injunction in respect of the suit property. After filing the written statement, the petitioner / defendant failed to appear before the Trial Court and as such, he was set exparte and exparte Judgment and Decree was passed on 11.04.2011.

3. On the strength of the exparte decree, the respondent filed Execution Petition in E.P.No.49 of 2011. On receipt of the notice in the Execution Petition, the petitioner filed the petition to set aside the exparte decree passed in the suit on 06.02.2012. Thereafter, he also entered appearance in the Execution Court and filed his counter.

4. On a perusal of the affidavit filed in support of the condone delay petition, it is revealed that after filing the written statement he fell ill due to Jaundice and he was taking treatment in his native place. Therefore, he was not able to appear before the Trial Court and he was set exparte and the exparte Judgment was passed on 11.04.2011.

5. On a perusal of the exparte Judgment passed in the suit, it is revealed that the Court below did not even frame any issues and without determining any points for consideration, simply allowed the suit. Therefore, the exparte Judgment dated 11.04.2011 is not in consonance under Order 20 Rule 4 of CPC. Considering the above facts and circumstances, this Court is inclined to give one more opportunity to the petitioner to defend his case.

6. The order dated 09.02.2018 passed in I.A.No.670 of 2014 in O.S.No.1367 of 2010 on the file of the learned Principal District Munsif Court, Coimbatore is set aside, on condition that the petitioner is directed to pay a sum of Rs.5000/- (Rupees Five Thousand only) as costs 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 automatically stand cancelled. On such payment, the Court below is directed to proceed with the trial and complete the same within a period of **six months** from the date of receipt of a copy of this order.

7. Accordingly, this Civil Revision Petition is allowed. No order as to costs. Consequently, the connected miscellaneous petition is closed.

29.06.2021

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
rna

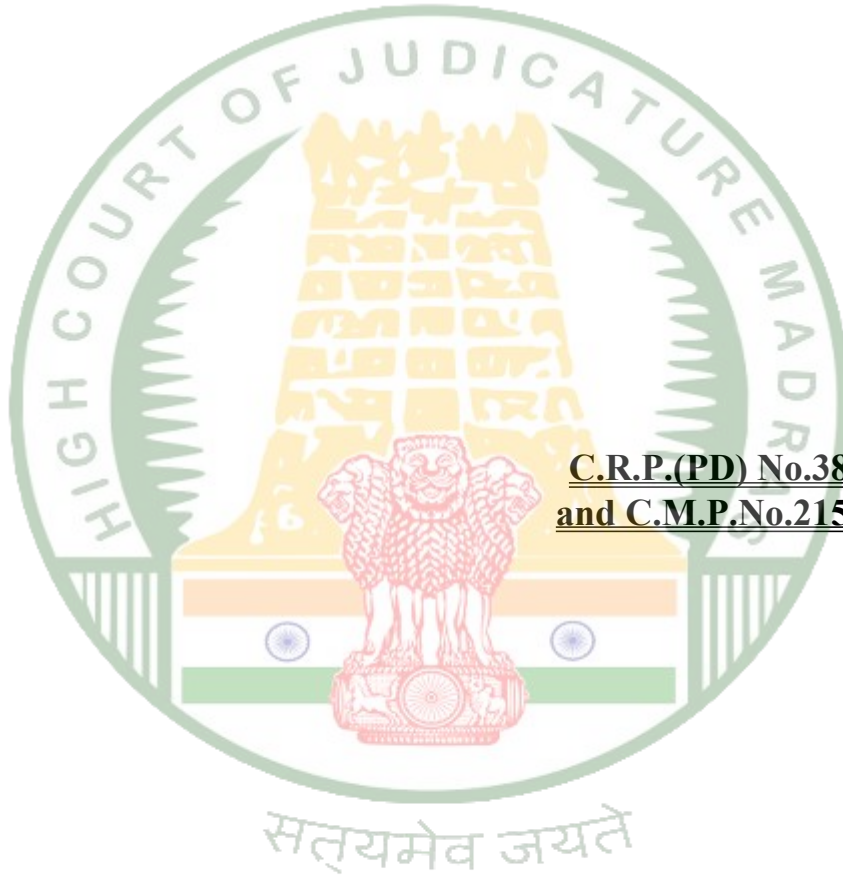
To

The Principal District Munsif Court,
Coimbatore.

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G.K.ILANTHIRAIYAN. J,

rna



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