

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2021

CORAM

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

CRP.NPD.No.4070 of 2018

Murahari

..Petitioner

Vs.

1.Selvaraj
2.Baskarann
3.Sri Ramulu
4.Venkatraman
5.Jothi

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC against the fair order and decretal order dated 11.08.2018 passed in IA.No.488 of 2016 in OS.No.56 of 2012 on the file of the I Additional District Munsif, Vridhachalam.

For Petitioner : Mr.R.Gururaj

For Respondents

For R3 to 5 : Mr.J.Antony Jesus

R1 & 2 : No appearance

ORDER

This Civil Revision Petition is filed against the fair order and decretal order dated 11.08.2018 passed in IA.No.488 of 2016 in OS.No.56 of 2012 on the file of the I Additional District Munsif, Vridhachalam, thereby dismissing the petition to condone the delay in filing the petition to set aside the exparte decree.

2. The petitioner is the second defendant and the respondents are the plaintiffs. The respondents filed suit for declaration and injunction. On receipt of the summons, the defendants failed to appear before the court below and also failed to file written statement and therefore they were set exparte and exparte decree was passed against them. Thereafter, they filed petition to set aside the exparte decree with delay of 748 days.

3. On perusal of the affidavit filed in support of the condone delay petition, the petitioner was only looking after the case. He fell ill due to jaundice and bedridden. Therefore, he had taken native treatment and as such he could not able to engage any counsel on record and also failed to file any written statement in the suit. On verification from the counsel, he came to understand about the

exparte decree and immediately, he filed petition to set aside the exparte decree.

4. The learned counsel for the respondents would submit that even according to the petitioner, they do not have any defence to succeed in the suit. Therefore, no purpose would be served if the condone delay petition is allowed. In the condone delay petition, courts need not go into the merits of the suit. However, sufficient cause to be stated in the accompanying affidavit to condone the delay.

5. As stated above, the petitioner herein fell ill due to jaundice and as such he could not able to instruct their counsel to file written statement in the suit. However, he may be given one opportunity to defend the suit, since the suit is filed for declaration and injunction.

6. In view of the above, this civil revision petition is allowed and the order dated 11.08.2018 passed in IA.No.488 of 2016 in OS.No.56 of 2012 on the file of the I Additional District Munsif, Vridhachalam is set aside on condition that the petitioner shall pay a sum of Rs.10,000/- (Rupees Ten Thousand only) as costs directly to the respondents within a period of two weeks from the date of receipt of copy of this Order, failing which the order passed by this Court shall

stand automatically cancelled. On such payment, the court below is directed to set aside the exparte decree and dispose of the suit within a period of nine months thereafter. No order as to costs.

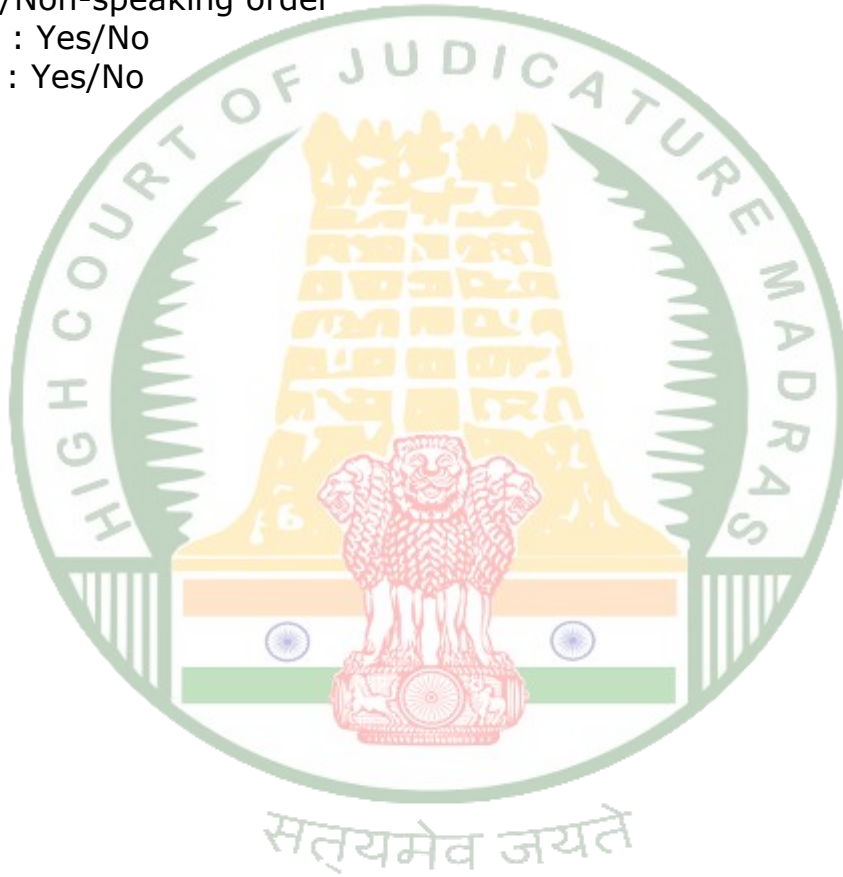
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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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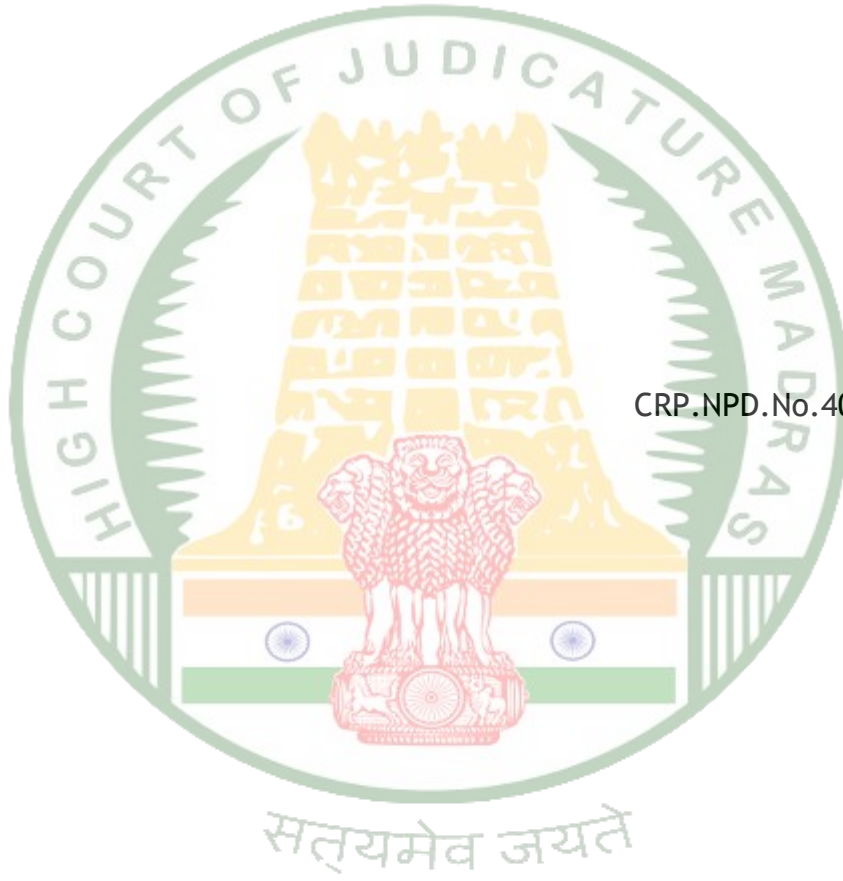
The I Additional District Munsif,
Vridhachalam.



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G.K.ILANTHIRAIYAN,J.

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