

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2021

CORAM

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

**C.R.P.(NPD) No. 4313 of 2018
and CMP No.23612 of 2018**

S.P.Nataraj

...

Petitioner

Vs

S.P.Mylsamy

...

Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 24.08.2018 made in E.P.No.53 of 2012 in O.S.No.17 of 2007 on the file of the Subordinate Judge, Pollachi.

For Petitioner : Mr.R.Kannan

For Respondent : Mr.M.N.Balakrishnan

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 24.08.2018 made in E.P.No.53 of 2012 in O.S.No.17 of 2007 on the file of the Subordinate Judge, Pollachi, thereby ordering arrest against the petitioner.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed a suit for permanent injunction and also

mandatory injunction, thereby directing the petitioner to renovate the common well and re-install the electric motor pumpset meant for the common well in the hands of the defendants. In the suit, the petitioner was set ex-parte and the suit was decreed. Thereafter, the petitioner filed a petition to set aside the ex-parte decree with condone delay petition in I.A.No.659 of 2017 with a delay of 2446 days, which is pending. In the meanwhile the respondent also filed an Execution Petition to execute the decree passed against the petitioner herein. The Court below allowed the Execution Petition and ordered for arrest of the petitioner. Admittedly, the condone delay petition to set aside the ex-parte decree is pending in I.A.No.659 of 2017. While pending the said petition, the Execution Court ought not to have ordered arrest. That apart, the petitioner and the respondent are own brothers and allegedly the decree was passed against the petitioner, directing the petitioner to renovate the common well and reinstall the electric motor pumpset.

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3. In view of the above, the order dated 24.08.2018 passed by the Subordinate Judge, Neyveli in E.P.No.53 of 2012 in O.S.No.17 of 2007 is hereby set aside and the Civil Revision Petition is allowed. However, the respondent is at liberty to file a fresh Execution Petition after disposal of

the condone delay petition to set aside the ex-parte decree. The Trial Court is directed to dispose of the condone delay petition on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

24.06.2021

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To
The Sub Judge,
Neyveli.

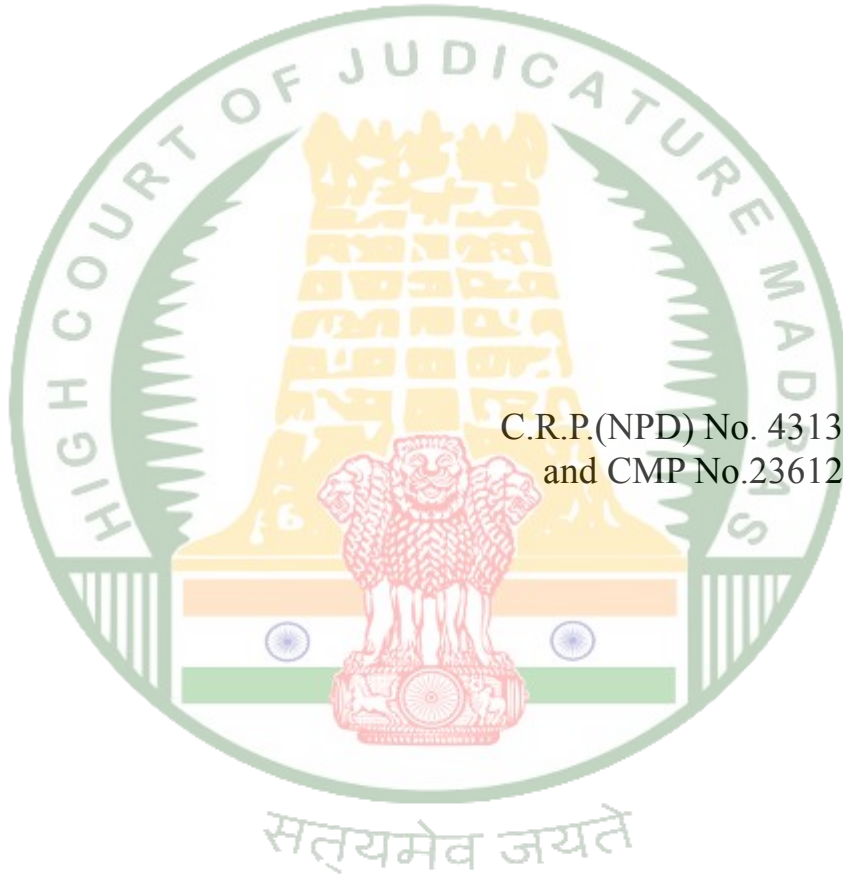


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C.R.P.(N.P.D).No.4313 of 2018

G.K.ILANTHIRAIYAN.J,

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