

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

**C.R.P.(NPD).No.1685 of 2015
and M.P.No.1 of 2015**

M/s.Mora Inc Industries
Prop M.R.Mohammed Asif
No.28/B, 3rd Phase, Sidco Industries Estates,
Hosur - 635 126
represented by Power Agent
M.R.Mohammed Azam

... Petitioner

Vs.

M/s.Muthalamman Metal Industries
rep by its Partner M.Sundar Lingam
S/o I.Marthanda Nadar,
Office at No.32/6, Madhavaram Milk Colony Road,
Kodungaiyur, Chennai - 600 118.

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order dated 06.04.2015 made in I.A.No.9837 of 2014 in O.S.No.6804 of 2012 on the file of the VII Assistant Judge, City Civil Court, Chennai dismissing the I.A.No.9837 of 2014 to condone the delay of 312 days in filing the petition to set aside the exparte decree passed in O.S.No.6804 of 2012 on 16.07.2013 under Section 5 of the Limitation Act.

For Petitioner : Mr.K.N.Nataraj

For Respondent : Mr.A.P.Romesh

ORDER

Challenging the order passed in I.A.No.9837 of 2014 in O.S.No.6804 of 2012 on the file of the VII Assistant Judge, City Civil Court, Chennai, the defendant has filed the above Civil Revision Petition.

2.I.A.No.9837 of 2014 has been filed by the defendant to condone the delay of 312 days in filing the petition to set aside the exparte decree dated 16.07.2013 in O.S.No.6804 of 2012. The application was contested by the plaintiff. The trial Court, taking into consideration the case of both parties, dismissed the application.

3.Now it is brought to the notice of this Court that the defendant has also filed an application in I.A.(SR).No.30608 of 2014 under Order 3 Rule 2 of the Civil Procedure Code to permit them to contest the suit through Power Agent. The application was filed on 23.06.2014, which according to the learned counsel for the petitioner was returned by the Registry of the City Civil Court on 03.07.2014. By order dated 06.04.2015, the trial Court dismissed the application in I.A.No.9837 of 2014. Since the defendant had already filed an application under Order 3 Rule 2 of the Civil Procedure Code, the trial Court could have passed orders in the said application prior to the disposal of the application in I.A.No.9837 of 2014.

4.The learned counsel on either side submitted that the trial Court may be directed to number the application in I.A.(SR).No.30608 of 2014, if it is otherwise in order and dispose of the application in I.A.No.9837 of 2014 afresh, after the disposal of the application filed under Order 3 Rule 2 of the Civil Procedure Code.

5.In view of the submissions made by the learned counsel on either side, without going into the merits of the case, I set aside the order passed in I.A.No.9837 of 2014 and remand the matter back to the VII Assistant Judge, City Civil Court, Chennai for fresh disposal, after the disposal of the application filed under Order 3 Rule 2 of the Civil Procedure Code.

6.The trial Court is directed to number the application in I.A.(SR).No.30608 of 2014 if it is otherwise in order and after the disposal of the said application, the VII Assistant Judge, City Civil Court, Chennai is also directed to dispose of the application in I.A.No.9837 of 2014, afresh, on merits and in accordance with law, within a period of six weeks from the date of disposal of the application filed under Order 3 Rule 2 of the Civil Procedure Code.

7. With these observations, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

24.11.2015

To

The VII Assistant Judge,
City Civil Court,
Chennai .

M.DURAIWAMY,J.
va

C.R.P.(NPD).No.1685 of 2015
and M.P.No.1 of 2015

24.11.2015