

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.4948 of 2014

and

M.P.No.1 of 2014

Arumugam Kumar

.. Petitioner

Vs

M/s.JTB Travels Private Limited
Having its registered Office at
NKM International House
Gr.Flr.178
Bank by Reclamation (Churchgate)
B.M.Chinai
Marg (LIC Lane)
Mumbai 400 020.
And its Branch Office at
Vincent's, 1420-A Trichy Road,
Coimbatore 641 018, Tamil Nadu.

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 11.11.2014 made in I.A.No.595 of 2014 in O.S.No.192 of 2013 on the file of the I Additional District Judge, Erode.

For Petitioner : Mr.M.Guruprasad
For Respondent : Mr.S.Ramasubramanian

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 11.11.2014 made in I.A.No.595 of 2014 in O.S.No.192 of 2013 on the file of the I Additional District Judge, Erode.

2.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3.Learned counsel for the petitioner submitted that the respondent as a plaintiff filed a suit for recovery of amount due on business transaction. When the trial has commenced, P.W.1 was cross examined and Exs.P.1 to P.56 were marked, the plaintiff has filed an application in I.A.No.540 of 2014 under Order 8 Rule 1 (A) (3) and Section 151 of CPC for reception of additional evidence. The said application was dismissed as withdrawn. Thereafter, a fresh application in I.A.No.595 of 2014 under Order 7 Rule 14(3) and Section 151 of CPC. But while passing the order, no liberty has been given. But that factum was not considered by the Trial Court. He further submitted that at the time of cross examination of P.W.1., documents now relied upon by the plaintiff/respondent has been confronted to him. In such circumstances, there is no necessity for filing the documents. That factum was also not considered by the Trial Court. Hence, he prayed for setting aside the order passed by the

Trial Court by condoning the delay and permitting to receive the documents which dilute the defence.

4. Resisting the same, the learned counsel for the respondent would submit that while he filed the application for condonation of delay and to receive the additional documents, wrong provision of law has been given. Hence, he made an endorsement as “The petitioner may be permitted to withdraw this I.A.No.540/2014 and file a fresh petition for condoning delay” and filed a fresh application for condoning the delay on 18.09.2014. The learned Trial Judge has passed an order as “In view of the endorsement made by the counsel for the petitioner, this petition is dismissed as withdrawn. Further, he sought for permission for filing fresh application. Merely because permission for filing the fresh application has not been given, his right has not been taken away. Hence, this application was maintainable. That factum was rightly considered by the Trial Court. He further submitted that for cross examination of P.W.1 this documents were confronted and without the documents, the Court can relied upon only oral evidence. Hence the Trial Court has rightly considered all these aspects and came to the correct conclusion. Hence, he prayed for dismissal of the revision petition.

5. Considered the rival submissions made on both sides and perused the

typed set of papers.

6. Now, this Court has to decide whether the withdrawal of I.A.No.540 of 2014 has hit by resjudicata? Since I.A.No.540 of 2014 is dismissed as withdrawn and it is not disposed of on merits, it is not hit by resjudicata. The respondent/plaintiff filed an application for condonation of delay in filing the additional documents and he quoted wrong provision of law as if the defendant filed an application instead of the plaintiff. So, he made an endorsement as to withdraw the application with liberty to file a fresh application. However, the Court has passed an order permitting to withdraw the application and the said application was dismissed as withdrawn. Merely because the application has been dismissed as withdrawn, the plaintiff's right to file an application to condone the delay in filing the document has not been taken away. Hence, I am of the view that the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion.

7. The respondent as a plaintiff filed a suit for recovery of amount due on business transaction. At the time of trial, P.W.1 was cross examined by the defendant, he confronted P.W.1 in respect of the documents now sought to be filed before the Court. But admittedly without marking the documents, evidence in respect of the contents of the documents shall not be looked into.

So, the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion and has rightly allowed the application. Therefore, I do not find any illegality or irregularity in the order passed by the Trial Court and the same is hereby confirmed.

8. In the result, the Civil Revision Petition is dismissed. Since the suit is of the year 2013 and already the plaintiff's side evidence was over, the Trial Court is directed to dispose of the suit in O.S.No.192 of 2013 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed. No costs.

27.11.2015

Index: Yes/No
Internet: Yes/No
cse

To

The I Additional District Court, Erode.

R.MALA. J.,

cse

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