

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.366 of 2014
and MP No.1 of 2014

P. Subramaniam
Petitioner

...

vs

S. Sasikumar

.... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and final order dated 18.11.2013 passed by the learned V Additional District and Sessions Judge, Coimbatore in I.A.No.392 of 2013 in A.S.No.63 of 2009 and prays to set aside the same.

For Petitioner : Mr.L. Mouli

For respondent : Mr.P. Valliappan

ORDER

Challenging the the fair and final order passed in I.A.No.392 of 2013 in A.S.No.63 of 2009 on the file of V Additional District and Sessions Court, Coimbatore, the defendant in the suit in O.S.No.755 of 2006 on the file of III Additional Sub Court, Coimbatore, has filed the above Civil Revision Petition..

2. The respondent/plaintiff filed a suit in O.S.No.755 of 2006 for recovery of money. After contest, the trial Court decreed the suit. Aggrieved over the same, the defendant filed an appeal in A.S.No.63 of 2009 on the file of V Additional District and Sessions Court, Coimbatore.

3. When the lower appellate Court posted the matter for hearing on 06.09.2011, since the defendant-appellant failed to appear, the lower appellate Court dismissed the appeal for non-prosecution. Thereafter, the defendant filed an application in I.A.No.392 of 2013 to condone the delay of 632 days in filing the application to restore the appeal, which was dismissed for default on 06.09.2011.

4. In the affidavit, filed in support of the petition, the defendant has stated that he is working as Driver in Tamil Nadu State Transport Corporation Limited and was transferred from Mettupalayam branch to Tiruppur branch and that he was attending duty at Tiruppur. Further he has stated that he is residing at Mettupalayam with his family. He has also stated that he was transferred from Mettupalayam Branch to Tiruppur Branch on 11.01.2011. The defendant further stated that since he was transferred to Tiruppur Branch, he was not aware of the dismissal of the appeal in A.S.No.63 of 2009. The averments stated in the affidavit, filed in support of the petition, were disputed by the respondent/plaintiff in his counter.

5. The lower appellate Court, taking into consideration of both the parties, dismissed the application, stating that the defendant has not explained the reasons for the delay in a proper manner.

6. The learned counsel, appearing for the petitioner/defendant submitted that the petitioner is willing to deposit half of the amount, as condition precedent for allowing the

application in I.A.No.366 of 2014. However, when this offer was made by the respondent/plaintiff before the lower appellate Court, the petitioner/defendant refused to accept the offer, made by the respondent.

7. In view of the submissions made by the learned counsel for the petitioner, also in the interest of justice and in order to give an opportunity to the petitioner to prosecute the appeal in A.S.No.63 of 2009, the delay of 632 days in filing the application to restore the appeal, is condoned on condition that the petitioner/defendant, depositing half of the decree amount to the credit of the appeal in A.S.No.63 of 2009 on the file of V Additional District and Sessions Court, Coimbatore, within four weeks from the date of receipt of a copy of this order. In the event of the petitioner/defendant, fail to deposit the amount as stated above, the application in I.A.No.392 of 2013 shall stand automatically dismissed.

8. In the case of the petitioner/defendant, depositing the amount within four weeks, the V Additional District and Sessions Judge, Coimbatore is directed to dispose of the appeal in A.S.No.63 of

2009 within six weeks from the date of such deposit. Accordingly, the order passed in I.A.No.392 of 2013 is set aside and with the above conditions, the Civil Revision Petition is allowed. No costs. Consequently, connected MP is closed.

19-10-2016

sr

Index:no
website:yes

Note: Issue Order copy on 21.10.2016

To

1. The V Additional District and Sessions Court,, Coimbatore
2. The III Additional Sub Court, Coimbatore,

M. DURAI SWAMY,J.,

sr

CRP(NPD)No.366 of 2014

19-10-2016