

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.4164 of 2015 &

M.P.No.1 of 2015

M/s.Sivagamy Stores
Rep. By its Proprietor
D.Senthilkumar
53, Andiappan Street
West Mambalam
Chennai – 600 033,

... Petitioner

v.

K.Ravi

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the judgment and decree made in C.M.A.No.110 of 2014 dated 21.04.2015 on the file of the III Additional City Civil Judge reversing the fair and decreetal order made in I.A.No.7770 of 2013 in O.S.No.6245 of 2012, dated 07.04.2014 on the file of the XIII Assistant City Civil Judge, Chennai and allow the above revision petition.

For Petitioner : Mr.P.Gunaraj

O R D E R

Aggrieved over the judgment and decree passed in C.M.A.No.110 of 2014 on the file of III Additional Judge, City Civil Court, Chennai, reversing the fair and decreetal order passed in I.A.No.7770 of 2013 in O.S. No.6245 of 2012 on the file of XIII Assistant Judge, City Civil Court, Chennai, the defendant has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S. No.6245 of 2012 for recovery of money.

3. Since the plaintiff failed to appear before the Trial Court, the suit was dismissed for default on 07.03.2013. Thereafter, the plaintiff filed an application in I.A.No.7770 of 2013 under Order 9, Rule 13 of CPC to restore the suit to file.

4. In the affidavit filed in support of the application, the plaintiff has stated that his counsel filed an application for adjournment stating that the plaintiff is intending to file an application to issue subpoena to the Commercial Tax Officer, however, the Trial Court had declined to grant time on that date and dismissed the suit for default.

5. The defendant filed their counter disputing the averments stated in the application.

6. The Trial Court, taking into consideration the case of both the parties dismissed the application.

7. Aggrieved over the same, the plaintiff preferred an appeal in C.M.A.No.110 of 2014 and the Lower Appellate Court, reversed the judgment and decree of the Trial Court and restored the suit to file.

8. Mr.P.Gunaraj, learned counsel appearing for the petitioner submitted that the defendant had already filed their written statement and the suit was posted for trial.

9. Since the plaintiff has given acceptable reason in the affidavit filed in support of the application for restoring the suit to file, in the interest of justice, the plaintiff could be given an opportunity to prosecute the suit on merits. In view of the same, the judgment and decree passed by the Lower Appellate Court is just and proper.

10. In these circumstances, I do not find any error or irregularity in the order passed by the Lower Appellate Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Since the suit is pending

from 2012 and that the suit was posted for trial, I direct the XIII Assistant Judge, City Civil Court, Chennai, to dispose of the suit in O.S.No. 6245 of 2012 on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order.

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

Index : Yes/No

04.01.2016

Rj

To

1. III Additional Judge,
City Civil Court,
Chennai.
2. XIII Assistant Judge,
City Civil Court
Chennai

M. DURAISWAMY,J.,

Rj

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