

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.2413 of 2016
and C.M.P.No.12423 of 2016

D.Baskaran

... Petitioner

Vs.

K.Babu

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreetal order dated 01.06.2016 made in I.A.No.274 of 2015 in A.S.No.39 of 2014 on the file of the Principal District Judge, Cuddalore District, Cuddalore.

For Petitioner : Mr.T.Dhanyakumar

ORDER

Challenging the order passed in I.A.No.274 of 2015 in A.S.No.39 of 2014 on the file of the Principal District Court, Cuddalore District, Cuddalore, the respondent in the Appeal, who is the plaintiff in O.S.No.59 of 2013 on the file of the II Additional Subordinate Court, Cuddalore, has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.59 of 2013 for recovery of money.

3.The trial Court, by its judgment dated 01.04.2014, decreed the suit. Aggrieved over the same, the defendant preferred an Appeal in A.S.No.39 of 2014 before the District Court, Cuddalore. Since the defendant failed to appear before the Lower Appellate Court, the Lower Appellate Court dismissed the Appeal for non-prosecution on 10.09.2015. Thereafter, the defendant filed an application in I.A.No.274 of 2015 to restore the Appeal to file. In the affidavit filed in support of the petition, the defendant has stated that since his counsel was engaged in some other Court, he could not appear on 10.09.2015 before the Lower Appellate Court. Hence, the Appeal was dismissed for non-prosecution. The averments stated in the petition were disputed by the plaintiff. The Lower Appellate Court, taking into consideration the case of both parties, allowed the application on payment of costs of Rs.1,000/-.

4.Admittedly, there is no delay in filing the application to restore the appeal to file. In the affidavit, the defendant has stated that only because his counsel was engaged in some other Court, he could not appear before the Lower Appellate Court and prosecute the Appeal. in the interest of

justice, in order to given an opportunity to the defendant/appellant, the Lower Appellate Court allowed the application and restored the appeal to file.

5.I do not find any reason to interfere with the order passed by the Lower Appellate Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

04.08.2016

To

The Principal District Judge,
Cuddalore District,
Cuddalore.

M.DURAIWAMY,J.
va

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