



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2016

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (NPD) . (MD) No.2036 of 2016

Saravanan .. Petitioner/Petitioner/Appellant
Vs.

V.Babu .. Respondent/Respondent/Respondent

PRAYER: Petition is filed under Section 115 of C.P.C., to set aside the fair and decretal order dated 18.12.2015 passed in I.A.No.124 of 2015 in unnumbered A.S., on the file of the Principal Subordinate Court, Madurai by allowing the Civil Revision petition.

For Petitioner : Mr.D.Nallathambi

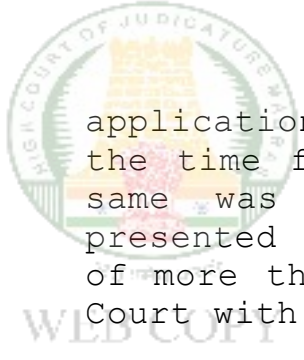
O R D E R

This Civil Revision arises out of the order passed by the learned Principal Subordinate Judge, Madurai in I.A.No.124 of 2015 in unnumbered A.S., dated 18.12.2015.

2. Heard the learned counsel appearing for the petitioner and perused the records.

3. According to the petitioner, the Revision petitioner has filed a suit in O.S.No.982 of 2009 before the Additional District Munsif Court, Madurai, for declaration and permanent injunction. The aforesaid suit was dismissed and the counter claim was allowed by the Additional District Munsif Court, Madurai. Aggrieved over the Judgment and Decree, the petitioner has preferred an appeal suit against the order passed in both the suit as well as the counter claim filed by the respondent. In the appeal suit filed against the counter claim which was numbered as A.S.No.104 of 2015 and the same was pending before the Principal Subordinate Court, Madurai.

4. Yet so far, the appeal suit was filed against the main suit in O.S.No.982 of 2009 along with condone delay and stay application before the Principal Subordinate Court, Madurai, by an order dated 26.11.2015 was allowed on payment of cost of Rs.1000/- to be paid on or before 18.12.2015. The above said order has not been complied with, therefore, the said application was dismissed. In the meantime, the petitioner filed an



application in I.A.No.124 of 2015 in unnumbered A.S.No., to extend the time for the payment of cost in the aforesaid I.A., and the same was dismissed. Thereafter, the petitioner has not re-presented the same before the Appellate Court. Now after a lapse of more than nine months, the petitioner has come up before this Court with the present Civil Revision petition.

5. Considering the submissions made by the learned counsel for the petitioner and on perusal of the available materials on records, it is an admitted fact that the Revision petitioner filed an I.A.No.124 of 2015 in an unnumbered appeal suit before the Principal Subordinate Court, Madurai to condone the delay of 153 days in filing the appeal suit. The said application was allowed on 26.11.2015 by the Principal Subordinate Court, Madurai directing the petitioner to pay Rs.1,000/- towards cost on or before 18.12.2015 while allowing the said application. Thereafter, the matter has been posted on 18.12.2015 and the same was dismissed for the reason that the petitioner has not complied with the conditional order passed by the Appellate Court.

6. It is also placed on record before this Court, that the petitioner also filed an application in I.A.No.124 of 2015 in the unnumbered appeal suit to enlarge the time for payment of cost and set aside the order dated 18.12.2015. The aforesaid application was returned as not maintainable. Thereafter, the petitioner has not taken any steps to re-present the said application filed to extend the time for payment of cost. Now after the lapse of ten months, the petitioner has filed the present application before this Court to set aside the order dated 18.12.2015 passed in I.A.No.124 of 2015 in unnumbered appeal suit on the file of the Principal Subordinate Court, Madurai.

7. Taking into consideration of all the facts and circumstances of the case, this Court is inclined to pass the following orders:-

1) The liberty is granted to the petitioner to re-present the unnumbered I.A.No. filed on 08.01.2016 before the Principal Subordinate Court, Madurai within a period of two weeks from the date of receipt of a copy of this order.

2) On re-presenting the said application, the Trial Court shall consider and number the said application in accordance with law within a period of two weeks from the date of receipt of a copy of this order.

3) The Trial Court is also directed to dispose the said application on merits in accordance with law as expeditiously as possible.



8. With the above directions, the Civil Revision petition is disposed of. No costs.

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Sd/-
Assistant Registrar(T&P)

Sub Assistant Registrar

To

The Principal Subordinate Judge, Madurai.

+1cc to MR.D.Nallathambi, Advocate SR.No.61005

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