

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2017

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD)No.1547 of 2014
and
M.P. No. 1 of 2017

Canara Bank,
Mylapore Branch
No.129, Royaplettah High Road
Chennai 600 004
represented by its Branch Manager
(SINCE TRANSFERRED TO
Asset Recovery Management Branch
563/1 Anna Salai, Teynampet
Chennai 600 018).

... Petitioner

1.M/s.Haji M.N.Mohamed Ismail & Sons,
represented by its partner
Mr.M.I.Mohamed Arif
No.147, Strahans Road
Chennai 600 012.

2.M/s.Sivagurunathan Textiles Ltd.,
represented by its Managing Director
Mr.R.Thiagarajan
No.1, 1st Link Street
Raghavan Colony
Jafferkhanpet, Chennai 600 083.

3.Mr.R.Thiagarajan
Managing Director
M/s.Sivagurunathan Textiles Ltd.,
No.1, 1st Link Street
Raghavan Colony
Jefferkhanpet, Chennai 600 083.

4.Indian Bank
Otteri Branch
Strahans Road
Chennai 600 012.
represented by its Branch Manager ... Respondents

This Civil Revision Petition filed under Article 227 of the Constitution of India against the Judgement and decree dated 25.09.2012 made in O.S. No.14050 of 2010, on the file of the XVIII Additional City Civil Court, Chennai.

For Petitioner : Mrs. Kausalya Balachandar

For respondents : Mr. S.Gunaseelan for R1

Non Appearance for R2 to R4.

सत्यमेव जयते

ORDER

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This Civil Revision Petition arises against the the Judgement and decree dated 25.09.2012 made in O.S. No.14050 of 2010, on the file of the XVIII Additional City Civil Court, Chennai.

2. Brief facts of the case is as follows :-

The 1st respondent filed a suit in C.S. No. 443 of 2007 before this Court seeking to direct the defendants 1 to 4, jointly and severally to pay the plaintiff a sum of Rs.8,53,349/-, together with the interest on the principal sum of Rs.6,00,950/- at the rate of 14% per annum, from the date of the plaint, till the date of realisation and also to direct the defendants 1 & 2 to pay the plaintiff a sum of Rs.4,71,197.25 together with interest @ 24% per annum, from the date of the plaint, till the date of realisation. In the aforesaid suit, the 3rd defendant/ petitioner filed a written statement before this Court. Thereafter, the suit was transferred to the XVIII Additional Court, Chennai in O.S. No.1041 of 2010 for enhancing the pecuniary jurisdiction.

3. According to the petitioner herein, no notice was served to the defendants therein, with regard to transfer of the suit. Subsequently, the court below passed a judgment and decree, under the provisions of Order XVII Rule 2 of Code of Civil Procedure, but the said provision has not been complied with.

Hence, the petitioner has filed the present revision challenging the judgment and decree.

4. The learned counsel for the petitioner/3rd defendant relies upon the extract of the 'A' Diary, which reveals that the defendants therein were absent on the date of hearing, before the court below and subsequently also the defendants were called absent. Thereafter, no arguments were advanced by the learned counsel, on the side of the defendants. While that being the position, the court below has totally lost its sight and has passed the judgment as if the judgement has been passed after hearing the defendants. Learned counsel for the petitioner/3rd defendant also states that Order XVII Rule 2 of CPC has not been followed by the court below. Therefore, the entire judgment and decree passed by the court below is liable to be set aside.

5. The learned counsel for the 1st respondent/plaintiff would submit that originally the suit was filed before this Court in C.S. No.443 of 2007 and subsequently the said suit was transferred to XVIII Additional City Civil Court, Chennai and the

same was numbered as O.S. No. 14050 of 2010 for enhancement of pecuniary jurisdiction. The learned counsel for the 1st respondent has filed 'B' Diary in the typeset of papers and relying upon the same, would submit that after the suit was transferred notice has been served on the learned counsel for the defendants. In spite of the same, the defendants have not appeared before the court below, which resulted in passing of the judgment and decree. The learned counsel for the defendants submitted that the defendants as well as learned counsel appearing for the defendants have not appeared before the court below but it has been wrongly stated in the order that the counsel for the defendants appeared and passed orders on merits in the aforesaid suit. However, the petitioner herein/ 3rd defendant has got remedy available, under the provisions of Code of Civil Procedure, to approach the concerned court to file an appropriate application to set aside the judgment and decree. Hence, this Revision Petition is not maintainable before this Court.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the material available on records.

7. On perusal of the materials, the 1st respondent herein has filed a suit in C.S. No. 443 of 2007 and the aforesaid suit has been transferred to the XVIII Additional City Civil Court, Chennai and the same has been re-numbered as O.S. No. 14050 of 2010. Subsequently, the aforesaid suit has been posted for evidence. The plaintiff therein was examined and thereafter it was posted for cross examination of the defendants. None appeared for the defendants and during subsequent hearings also the defendants were absent and hence judgment and decree was passed in the aforesaid suit. Now, the learned counsel for the petitioner submits that neither the defendants nor the learned counsel for the defendants appeared before the lower court. Therefore, the contention of the petitioner/3rd defendant that the court below has wrongly indicated in the order that the counsel for the defendants appeared on behalf of the defendants and

passed the judgement and decree, is contrary to Order XVII Rule 2 of the Civil Procedure Code.

8. In view of the above submission made by the parties, the Civil Revision Petition is disposed of, with liberty to the petitioner/3rd defendant to approach the concerned court, to file an appropriate application to set aside the ex-parte decree, if so advised, within a period of four weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

08.06.2017

Index : yes / no

Speaking order/ Non-speaking order

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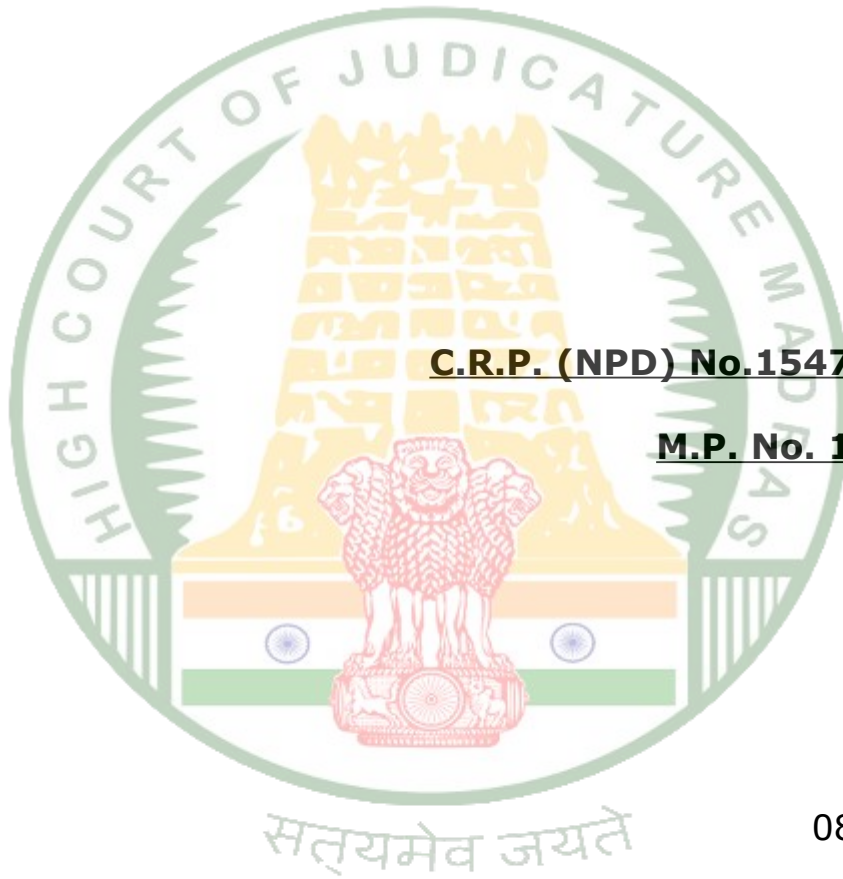
To

The XVIII Additional City Civil Court
Chennai.

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D.KRISHNAKUMAR, J.

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