

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 06.09.2017****CORAM****THE HONOURABLE MR. JUSTICE R. SURESH KUMAR****Crl.R.C.No.950 of 2017****and****Crl.MP.No.8872 of 2017**

Kotak Mahindra Bank Limited
rep.by its Power of Attorney
Mr.Irfan Sheriff,
No.1054, Ground Floor,
Gowtham Centre Annexe,
Avinashi Road,
Coimbatore – 641 018.

... Petitioner

Vs.

Vijayanand

... Respondent

Criminal Revision filed under Sections 397 and 401
Cr.P.C. to set aside the order passed in STC No.3455 of 2016
dated 30.05.2017 by the learned Judicial Magistrate No.III,
Coimbatore and to restore the same.

For Petitioner : Mr.Kingsly Solomon

ORDER

This revision case has been filed against the order passed by the learned Judicial Magistrate No.III, Coimbatore in STC No.3455 of 2016 by order dated 30.05.2017.

2.The petitioner is the Banking Company, who had received two cheques for a sum of Rs.4,00,000/- and Rs.2,60,000/- from the respondent for the repayment of loan towards the petitioner and when the petitioner deposited the cheques for collection, it was returned as "Funds insufficient". Thereafter, the petitioner, after adopting legal procedure as contemplated under the provisions of the Negotiable Instrument Act, had filed a complaint for the offence punishable under Section 138 of the Negotiable Instruments Act. The said complaint in STC No.3455 of 2016 came up for hearing before the trial Court, on 19.01.2017 and thereafter, on 28.03.2017. On both occasions, since the petitioner did not present before the trial Court, his presence was dispensed with by accepting the petition filed under Section 256 of CrPC.

3.However, when the case was again taken up for hearing on 30.05.2017, the petitioner did not appear and therefore, the learned Magistrate has dismissed the complaint for default, as no process fee has been paid for summoning the respondent/accused. Against the said order, the present revision has been filed.

4.I have heard Mr.Kingsly Solomon, learned counsel appearing for the petitioner.

5.In addition to this revision case and in support of this petition, the petitioner has filed a supporting affidavit along with docket orders of the trial Court. On perusal of the said affidavit as well as the docket orders, this Court finds that the petitioner Bank represented by its Power of Attorney, who because of his personal reason, has not appeared before the trial Court, where on his instruction, petition to dispense with the personal appearance was filed by the learned counsel and the same was accepted by the trial Court. On 30.05.2017, since the petitioner could not present before the Court, he had

instructed to his counsel to file petition under Section 256 of CrPC. It is further claimed by the petitioner that when such petition was filed before the trial Court on the said hearing dated 30.05.2017, the learned Magistrate did not accept the same. After not accepting the said petition for dispensing with the presence of the petitioner, on that date, the present impugned order has been passed. In this regard, the learned counsel appearing for the petitioner would state that the petitioner is a Banking Company and for repayment of the loan alone, the said cheques were issued by the respondent/accused and if the said case i.e, the complaint filed by the petitioner is not tried and decided on merits, the petitioner would be greatly prejudiced. Moreover, the non appearance of the respondent, is not a wilful one and in fact, to dispense with the presence of the petitioner, though instructions had been given to the learned counsel appearing for the petitioner to file petition under Section 256 of CrPC and that the same was also filed, it was not accepted by the learned Magistrate and he proceed to dismiss the complaint for not taking steps to pay process fee for issuance of summons. According to the learned counsel, this had happened due to the

communication gap between the petitioner and his counsel and also, because of the personal inconvenience caused to the petitioner. Unless the said impugned order is interfered with, the valuable right of the petitioner would be deprived of.

6.Considering all these aspects and taking into account the situation, as explained by the petitioner's side, the said case was dismissed even prior to the issuance of summons. Accordingly, no right of hearing to the respondent arisen at this stage. Hence, this Criminal Revision Case is allowed and the impugned order is set aside.

7.It is made clear that the petitioner shall appear before the trial Court after restoration of the complaint, pursuant to this order and pay necessary process fee forthwith and also the petitioner shall not cultivate the habit of filing petition under Section 256 of CrPC in each and every hearing.

With these directions, this Criminal Revision Case is allowed. Consequently, connected Miscellaneous Petition is closed.

06.09.2017

Index :yes/no
Internet :yes/no

mps

To

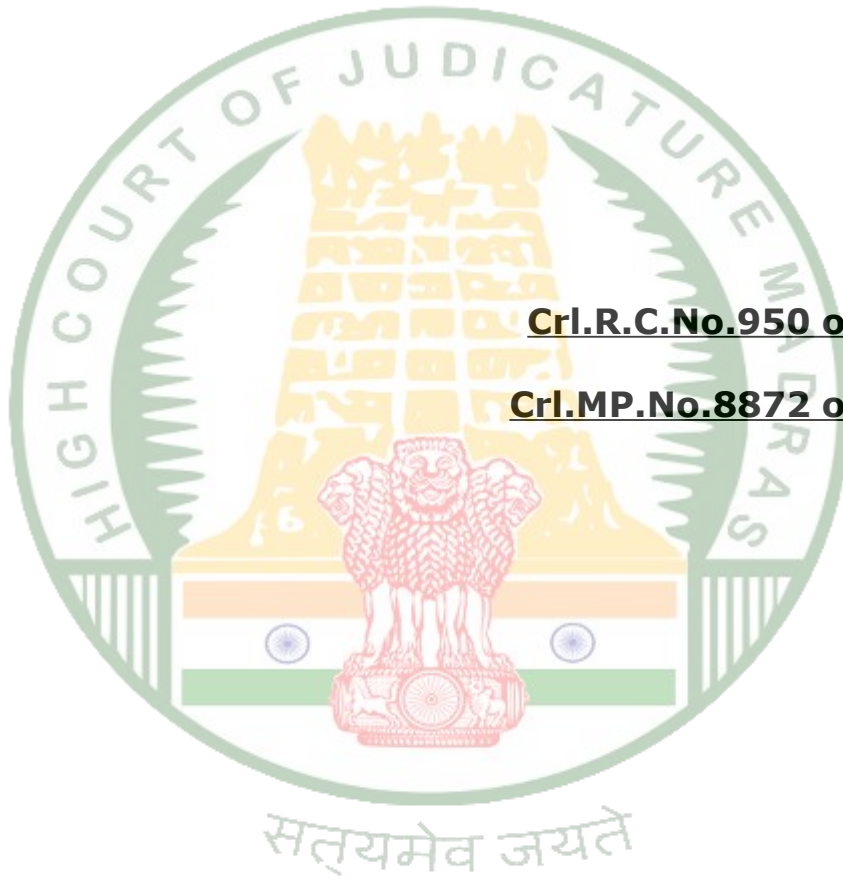
The Judicial Magistrate No.III,
Coimbatore.



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R. SURESH KUMAR, J,

mps



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