

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (NPD) No. 3332 of 2017

Kamuvel

... Petitioner

Vs

1. K.Murugesan

2. Suganthi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order in C.M.A.No.6 of 2016 dated 29.06.2017 on the file of the II Subordinate Judge, Cuddalore.

For Petitioner : Mr. N. Suresh

For Respondents : Mr. S. Rajagopal

ORDER

This revision arises against the fair and decreetal order in C.M.A.No.6 of 2016 dated 29.06.2017 on the file of the II Subordinate Judge, Cuddalore.

2. The learned counsel for the petitioner would submit that the petitioner filed the suit in O.S. No. 183 of 2013, for declaration and recovery of possession. In the aforesaid suit, the respondents filed their written statement and the matter was posted for trial on 17.06.2015. On that day, the revision petitioner/ plaintiff did not appear before the court below and the suit was dismissed for non-prosecution. Hence, the Interlocutory Application in I.A. No. 451 of 2015, under Order 9 Rule 9 of CPC, was filed by the petitioner/ plaintiff, for restoration of the suit. After hearing both the parties, the trial court dismissed the said Application for restoration. Challenging the said order, the revision petitioner/ plaintiff filed an appeal in C.M.A. No.6/2016 before the II Additional Sub Judge, Cuddalore. The said appeal was also dismissed by the appellate court. Against the same, the instant revision petition has been filed before this Court.

3. According to the petitioner, the suit was dismissed on 17.06.2015, for non-prosecution. Immediately, on 18.06.2015, the Interlocutory Application in I.A. No. 451/2015 was filed by the petitioner/ plaintiff, for restoration of the suit. But, both the courts

below, without appreciating the case of the petitioner, has erroneously dismissed the applications. The learned counsel for the petitioner submitted that the suit has to be contested on merits, otherwise the petitioner would suffer severe loss and so prayed for an opportunity to contest his suit before the lower court, to be decided on merits. The petitioner also undertakes to abide with the conditions imposed by this Court, for his non-appearance in the suit, before the trial court and prayed to set aside the order passed by the trial court.

4. Per contra, the learned counsel for the respondents would submit that both the courts below have considered the submissions of both the parties in detail and the conduct of the petitioner/ plaintiff would clearly prove that the matter was adjourned on several occasions and inspite of that, the petitioner/ plaintiff was not ready to contest the case. Thus, finding that the petitioner/ plaintiff is unnecessarily dragging the proceedings, the court below dismissed the suit. Therefore, the court below is right in dismissing the suit and so the present revision petition is liable to be dismissed.

5. As discussed in detail by the court below, inspite of several opportunities granted on many occasions to the revision petitioner/ plaintiff, the plaintiff was not ready to contest the suit and so the same was dismissed on 17.06.2015. This shows the conduct of the petitioner/ plaintiff that he was not vigilant in prosecuting the case. Taking into consideration the request of the revision petitioner to grant one more opportunity to decide the suit on merits, otherwise the petitioner/ plaintiff would be put into irreparable loss and hardship, this Court is inclined to grant an opportunity to the revision petitioner/ plaintiff to put forth his case on merits, in the suit. The petitioner is directed to co-operate in the trial, without seeking any further adjournments to protract the proceedings of the suit. The learned counsel for the petitioner has filed an affidavit to that effect, before this Court.

6. In view of the above said undertaking given by the learned counsel for the petitioner and in order to protect the interest of both the parties, this Court is inclined to pass the following orders :

- 1) The orders passed by the lower Appellate court in C.M.A. No.6 of 2016 dated 29.06.2017 by the II Additional Subordinate Judge, Cuddalore confirming the fair and decreetal order passed in I.A. No.451 of 2015 in O.S. No.183/2013 dated 03.03.2016 by the Principal District Munsif, Cuddalore is set aside, on payment of cost of Rs.5000/-, payable to the respondents, within two weeks from the date of receipt of a copy of this order.
- 2) As per the conditional interim order dated 15.09.2017 granted by this Court, the petitioner has already deposited Rs.25,000/- to the credit of the suit before the District Munsif Court, Cuddalore. The respondents are permitted to withdraw the aforesaid cost of Rs.5000/-, from such deposit made by the petitioner, by filing appropriate application, before the trial court.
- 3) The petitioner is also permitted to withdraw the balance amount, on filing appropriate application.
- 4) The Undertaking Affidavit dated 22.11.2017, filed by the revision petitioner, shall form part of the records.

5) In view of the Undertaking Affidavit dated 22.11.2017, the trial court is directed to dispose of the suit, within a period of three months from the date of receipt of a copy of this order.

7. The Civil Revision Petition is allowed, on the above terms. No order as to costs.

21.11.2017

Index : Yes/ No

Speaking order/ Non speaking order

[Issue order copy next week]

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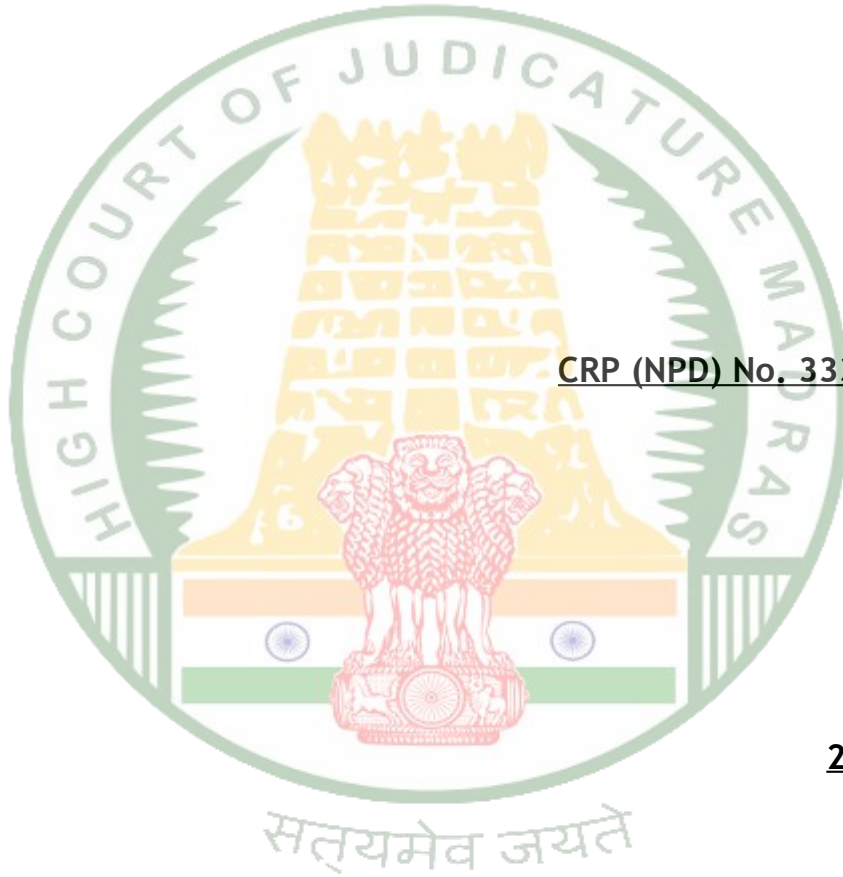
To

1. The II Additional Subordinate Judge,
Cuddalore.
2. The Principal District Munsif,
Cuddalore.

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D. KRISHNAKUMAR J.,

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