

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2017

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THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.NPD.No.3919 of 2017

and

CMP.No.18323 of 2017

Shakeela

..Petitioner

Vs.

T.Faiyaz Ahmad

... Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 31.07.2017 passed in IA.No.52 of 2017 in OS.No.37 of 2015 on the file of the Third Additional District Judge, Tirupattur at Vellore District

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For petitioner : M/s.Elizabeth Ravi

For respondent : Mr.S.Kothandaraman

ORDER:

According to the revision petitioner, the respondent has

filed a suit in OS.No.37 of 2015 for specific performance. In the aforesaid suit, the revision petitioner could not appear on 29.01.2016 for filing written statement. Pursuant to that, the court below has passed an ex-parte order against the revision petitioner. Thereafter, the revision petitioner has filed an application in IA.No.52 of 2017 to condone the delay of 265 days in filing an application to set aside the ex-parte decree. The revision petitioner contended that only due to the illness, he could not appear before the court below on the hearing date. But the court below rejected the said contention and dismissed the above application. The learned counsel for the revision petitioner would submit that if the above application is not allowed, the revision petitioner will be put to irreparable loss and undertakes to compensate the same by way of money.

2. The learned counsel for the respondent would submit that the court below has considered the explanation of the revision petitioner. But the petitioner has not produced any materials to prove the claim. Therefore, the court below has rightly dismissed the said application and hence, the Civil Revision Petition is liable to be dismissed.

3. Considered, the submissions made by the learned counsel for the parties and perused the materials available on record.

4. It is seen that the revision petitioner has filed an application to condone the delay of 265 days in filing an application to set aside the ex-parte decree. According to the revision petitioner, the revision petitioner was not able to appear on 29.01.2016 due to illness. Further, the respondent filed the suit for specific performance and the same is disputed by the petitioner / defendant. Therefore, an opportunity shall be granted to the revision petitioner to contest the case on merits. Hence, in the interest of justice, one more opportunity may be granted to the revision petitioner to adjudicate the suit on merits. Therefore, the order passed by the court below is liable to be set aside. However, the revision petitioner has not filed any documentary evidence to prove his claim in the application. Therefore, I am of the view, for the aforesaid delay, the petitioner has to compensate by imposing heavy cost on the revision petitioner.

5. The learned counsel for the respondent would fairly submitted before this Court, the said cost may be paid to the

orphanage organisation i.e. Balamandir Orphanage, T.Nagar, Chennai.

6. Pursuant to the above facts and submissions of the counsel for parties, this Court is inclined to pass the following orders.

(a) The order passed by the court below in IA.No.52 of 2017 in OS.No.37 of 2015 dated 31.07.2017 is set aside on condition that the revision petitioner shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) payable to Balamandir Orphanage, T.Nagar, Chennai within two weeks from the date of receipt of a copy of this Order. In default, the Civil Revision Petition stands automatically dismissed.

(b) In the event of said conditional order has been complied with by the revision petitioner, the court below is directed to pass appropriate orders in the application filed under Order 9 Rule 13 of the Civil Procedure Code by the revision petitioner in accordance with law at an earliest.

7. Thus, the Civil Revision Petition is allowed with above

terms. Consequently, the connected miscellaneous petition is closed. No costs.

24.11.2017

Speaking/Non-speaking order

Index :Yes/No

Internet: Yes/No

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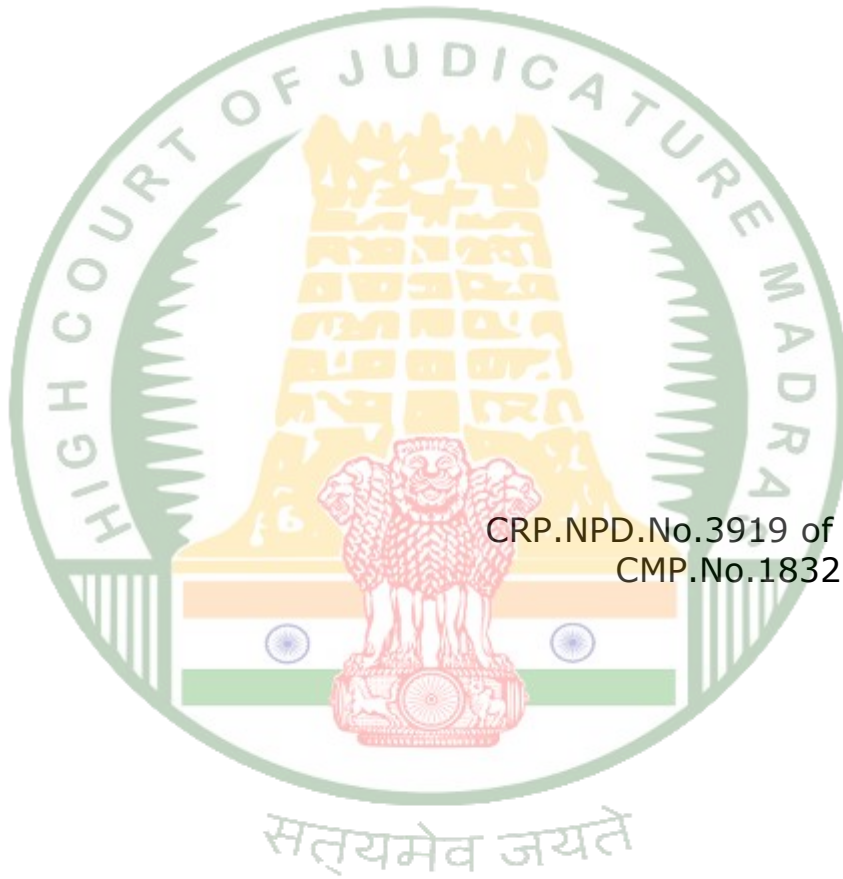
To
Third Additional District Judge,
Tirupattur at Vellore District



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D.KRISHNAKUMAR. J,

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