

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.2550 of 2011
and M.P.No.1 of 2011

M.S.Rajaram

.. Petitioner

Vs.

1.Indian Bank
represented by its
Assistant General Manager
No.21, North mada street
Mylapore, Chennai-600 004.

2.S.Govardhanan

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C.,
against the fair and decretal order dated 29.04.2011 made in
I.A.No.19576 of 2010 in O.S.No.9209 of 2008 on the file of the XIII
Assistant City Civil Court, Chennai.

For Petitioner : Mr.M.Vivekanandan

For R1 : Mr.R.Ramesh for
M/S.RRK Associates

For R2 : Mr.V.Bhiman

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 29.04.2011 made in I.A.No.19576 of 2010 in O.S.No.9209 of 2008 on the file of the XIII Assistant City Civil Court, Chennai.

2. The petitioner is the first defendant, first respondent is the plaintiff and second respondent is the second defendant in O.S.No.9209 of 2008. The first respondent filed suit for recovery of money. Petitioner entered appearance and did not file written statement. He was set exparte and exparte decree was passed on 09.12.2009. The petitioner filed I.A.No.19576 of 2010 to condone the delay of 237 days in filing the petition to set aside the exparte decree.

3. According to the petitioner, he is working as a teacher. His wife and mother-in-law fell ill and due to the same, he could not contact his advocate to give instruction to file written statement. He contacted his advocate during June 2010 and came to know about the exparte decree and filed an application to condone the delay of

237 days in filing the petition to set aside the exparte decree.

4. The first respondent filed counter affidavit and denied the averments made in the affidavit filed in support of the said application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application on the ground that the petitioner has not given any valid reason to condone the delay of 237 days in filing the petition to set aside the exparte decree and did not produce any document to substantiate his case that his wife and mother-in-law fell ill and he was taking care of them.

6. Against the said order of dismissal dated 29.04.2011 made in I.A.No.19576 of 2010 in O.S.No.9209 of 2008, the present civil revision petition is filed by the petitioner/first defendant.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. On 05.09.2017, when the matter was taken up for hearing, there was no representation on behalf of the first respondent. The

learned counsel for the petitioner submitted that the petitioner undertook to deposit a sum of Rs.50,000/- to the credit of the above suit and prayed to condone the delay of 237 days in filing the petition to set aside the exparte decree.

9. Today, the petitioner and learned counsel for the petitioner and learned counsels for the respondents 1 and 2 are present. At the time of hearing, the learned counsel for the petitioner submitted that the petitioner has valid grounds on merits to defend the case and it is not his intention to delay the trial of the suit. Due to bonafide reasons only, the petitioner could not instruct his counsel to file written statement and to show the bonafide, the petitioner is willing to deposit a sum of Rs.50,000/- to the credit of the suit in O.S.No.9209 of 2008 without prejudice to the contentions made in the written statement. The learned counsel for the petitioner and petitioner also made an endorsement to that effect.

10. Considering the submissions made by the learned counsel for the petitioner that the petitioner would deposit a sum of Rs.50,000/- to the credit of the suit to show his bona fide and in order to give an opportunity to the petitioner to put forth his case

on merits, the Civil Revision Petition is allowed and impugned order dated 29.04.2011 made in I.A.No.19576 of 2010 is set aside on condition that the petitioner shall deposit a sum of Rs.50,000/- (Rupees Fifty thousand only) as offered by him within a period of four weeks from the date of receipt of a copy of this order, failing which, the order dated 29.04.2011 dismissing the application in I.A.No.19576 of 2010 to condone the delay of 237 days will be restored. No costs. Consequently, connected Miscellaneous Petition is closed.

11.09.2017

Index:Yes/No

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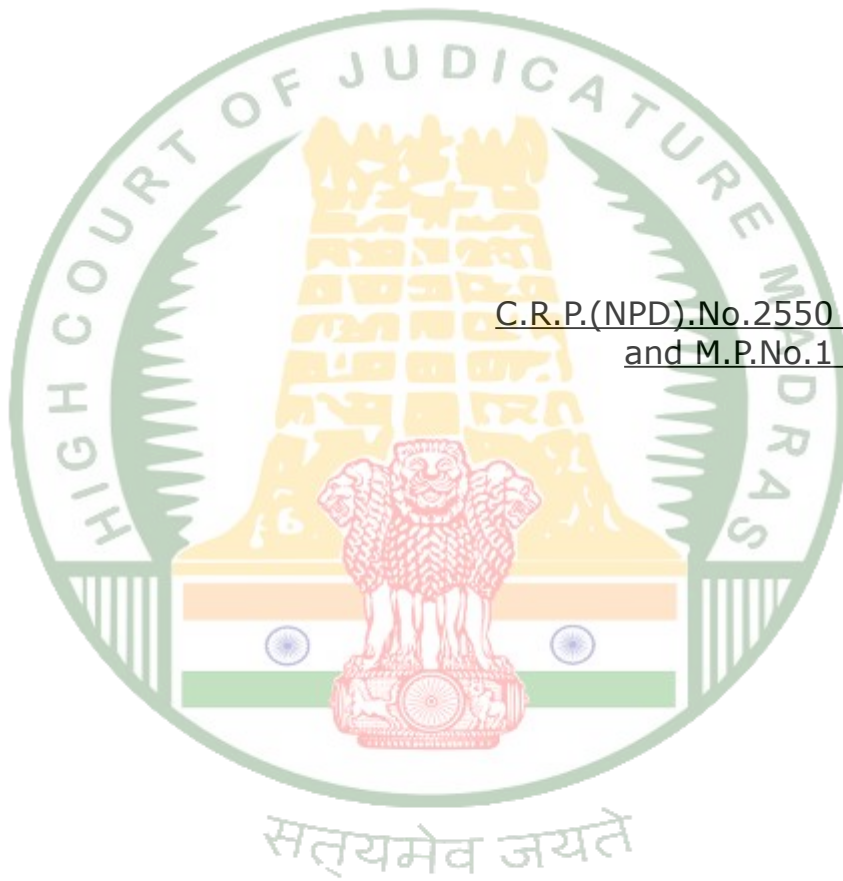
To

XIII Assistant City Civil Court
Chennai.

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V.M.VELUMANI, J.

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