

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.960 of 2014
& M.P.No.1 of 2014

1. P.M.Mathew
2. Mary Mathew

.. Petitioners

Vs.

K.M.C.Stephenson
Respondent

..

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order of the Deputy Commissioner of Labour – II, Workmen Compensation, DCLI DMS Building, Chennai – 600 006 in EC I.A.No.93 of 2012 dated 18.10.2013.

For Petitioners : Mr.V.Balaji

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the order of the Deputy Commissioner of Labour – II, Workmen Compensation, DCLI DMS Building, Chennai – 600 006 in EC

I.A.No.93 of 2012 dated 18.10.2013.

2. Though the respondent has entered appearance, there is no representation for the respondent.

2.1. The petitioners are the respondents and the respondent is the petitioner in EC.I.A.No.93 of 2012 on the file of Deputy Commissioner of Labour - II, Workmen Compensation. The respondent filed the said EC.I.A.No. 93 of 2012 to condone the delay of 1467 days in filing the claim petition.

3. According to the respondent, while working as an employee of the petitioners, on 14.10.2007, he fell down from the first floor and suffered injury. He was taking treatment for the injuries suffered and could not file the claim petition for compensation immediately and prayed for condoning the delay in filing the petition.

4. The petitioners filed counter and denied the employer-employee relationship. The petitioners submitted that the respondent is a builder. The petitioners availed the service of the respondent for construction of the house, the total cost of

construction was fixed as Rs.8,10,000/- and the respondent received a total sum of Rs.7,70,286/- on various dates. The respondent has agreed to complete work on 15.11.2007. The respondent did not complete the work on or before 15.11.2007, as per the undertaking given by him in the agreement dated 29.09.2007. But, suddenly he left the construction works before completing the same, therefore, the petitioners have filed a complaint before the District Consumer Disputes Redressal Forum, Chengalpattu. After receiving notice, the respondent did not appear and the said consumer petition was allowed and a sum of Rs.2,00,000/-, as compensation, was awarded to the petitioners for deficiency of the service done by the respondent on 08.08.2008. Against that order, the respondent filed an appeal before the State Consumer Disputes Redressal Commission, Chennai. The said appeal was dismissed on 26.3.2012. Against the dismissal order by the State Commission, the respondent filed an appeal before the National Consumer Dispute Redressal Commission, New Delhi with condone delay petition and the same was dismissed. The said appeal was numbered as Revision before the National Commission and that was also dismissed on 27.08.2012. The petitioners filed E.A.No.6 of 2009 and for executing the order passed by the

Consumer Forum, the respondent did not appear before the Execution Court. Non bailable warrant was issued against the respondent and the respondent was arrested by the Inspector of Police, Thucklay on 12.09.2011 and produced before the District Consumer forum and on that date, he agreed to pay the awarded amount. Suppressing these facts, as a counter blast, respondent has filed the present application to condone the delay of 1467 days in filing the claim petition. The learned Deputy Commissioner of Labour -II, Chennai has allowed the application EC.I.A.93 of 2012 holding that workmen compensation Act is beneficial legislation and the petition for condonation of the delay must be considered liberally.

5. Against the order in EC.I.A.No.93 of 2012 dated 18.10.2013 the present civil revision petition is filed.

6. Heard the learned counsel for the petitioners and perused the materials available on record.

7. From the materials on record, it is seen that the

petitioners initiated proceedings before the Consumer Forum and obtained orders before the District Consumer Forum, Chengalpattu and against that order, an appeal and revision filed before the State consumer Forum and National Consumer Forum were dismissed. The petitioners filed E.P. before the District Consumer Forum, Chengalpattu. The respondent was arrested and produced before the District Consumer Forum and the respondent agreed to pay the amounts, as per order of the District Consumer Forum. According to the petitioners, as counter blast, the respondent has filed a petition in EC I.A.No.93 of 2012 suppressing all these facts.

8. Further, from the materials on record, it is seen that the respondent has participated in all the proceedings up to the National Forum. In the proceedings initiated by the respondent, claiming compensation, the respondent has suppressed all these facts and filed an application before the Deputy Commissioner of Labour -II, Chennai to condone delay of 1467 days. The reason given by the Deputy Commissioner of Labour -II, Chennai is not applicable to the facts of the present case. Though the respondent did not file counter, has not denied the proceedings initiated before the Consumer Forum and his participation in the said proceedings.

From the affidavit filed by the respondent to condone the delay in filing the claim petition it is seen that he has not given any particular reason for the delay in filing the petition. It is no doubt true that the length of delay is not a criteria, but, the intention of the parties must be bonafide should not be malafide. The parties must give valid and sufficient reasons for condoning the delay. The reason given by the respondent for condoning the delay is not acceptable and valid. The learned Deputy Commissioner of Labour -II, Chennai has failed to consider the proceedings before Consumer Forum and participation of respondent in all the proceedings up to National Commission and appeared before the District Forum and agreed to pay the settlement amount.

9. In view of the same, the order of the learned Deputy Commissioner of Labour -II, Chennai made in EC.I.A.No.93 of 2012 dated 18.10.2013 is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

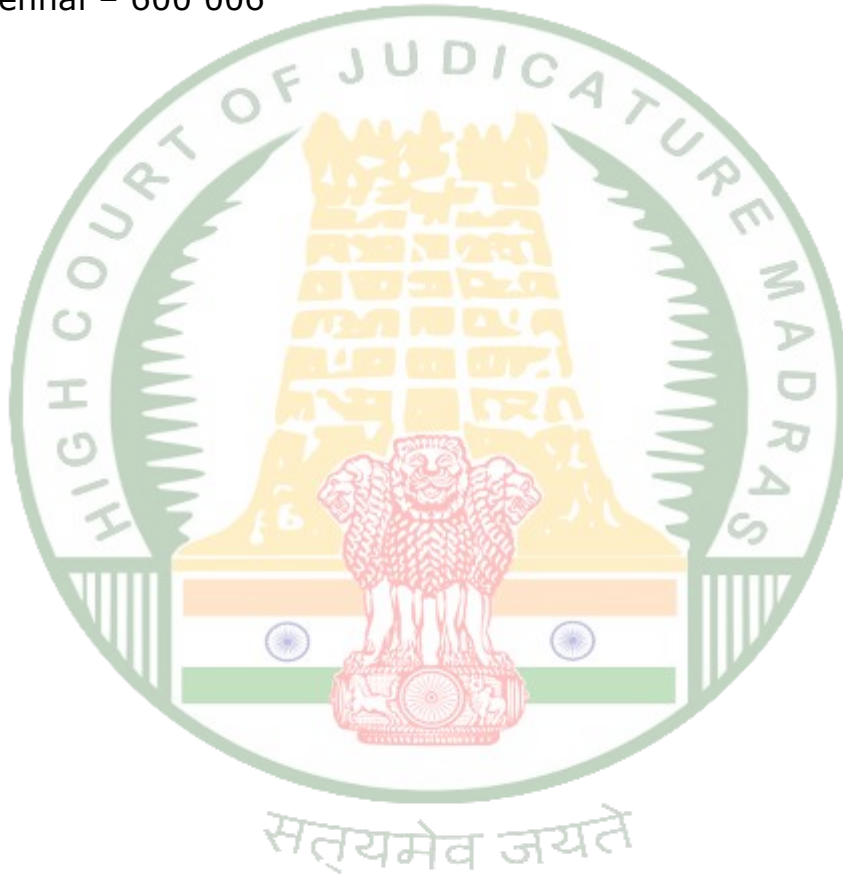
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Speaking Order/Non-speaking Order
Index :Yes/No

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To

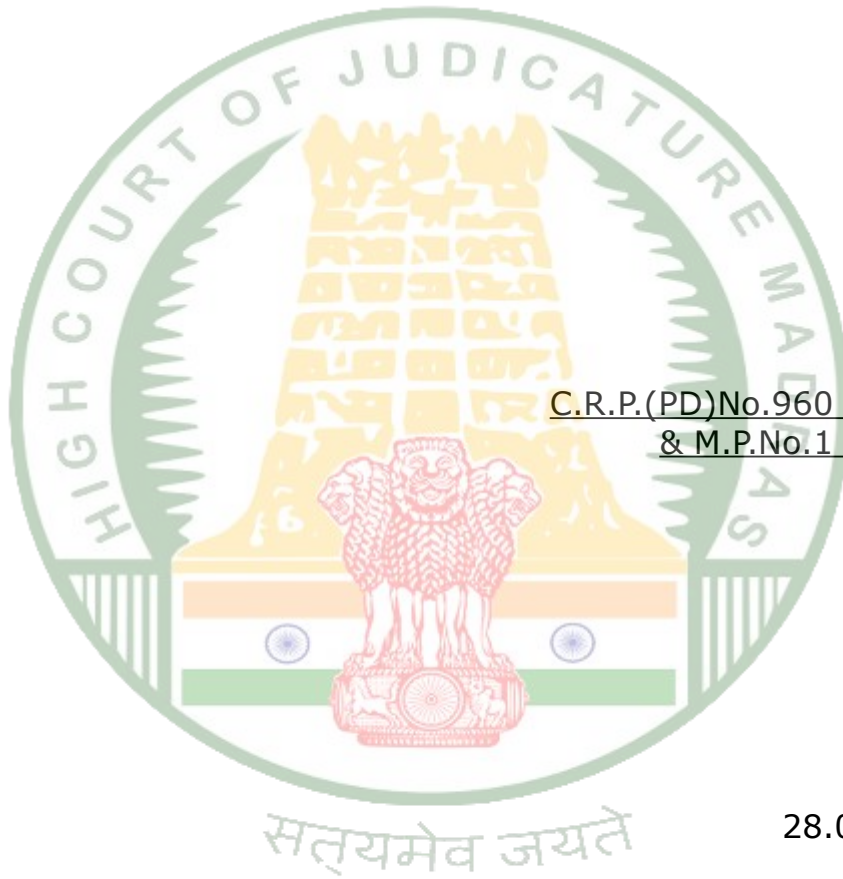
The Deputy Commissioner of Labour – II,
Workmen Compensation, DCLI DMS Building,
Chennai – 600 006



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V.M.VELUMANI, J.

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