

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.3186 of 2013

Nizam Babu

.. Petitioner

Vs.

Karim Batsha

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Docket Order of the learned District Munsif, Arcot, dated 08.04.2013 and made in I.A.No. of 2011 in RCOP.No.5 of 2007 and entertain the same and dispose of the same in accordance with law.

For Petitioner : Mr.R.Shankar

For Respondent : No Appearance

ORDER

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The petitioner has filed this Civil Revision Petition to set aside the Docket Order of the learned District Munsif, Arcot dated 08.04.2013 whereby his Interlocutory application filed under Section 148 of CPC

seeking enlargement of Time towards payment of a cost was returned unnumbered.

2.I heard Mr.R.Shankar, learned counsel for the petitioner and there is no representation for the respondent and perused the records.

3.The record disclose that the respondent herein / landlord has initiated Rent Control proceedings under Section 10(2)(1) and (3) of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 in R.C.O.P.No.5 of 2007 against the petitioner herein / Tenant for eviction on the ground of Willful default and own occupation.

4.Whereas in the said Rent Control proceedings the respondent failed to appear and accordingly was set Ex-parte and an Ex-parte Decree was passed against him. In the said circumstance the respondent filed an application to set aside the Ex-Parte Decree contending that due to sickness he was not in a position to appear before the Court. The said application came to be allowed by Trial Court on 21.07.2011 on a condition to pay a cost of Rs.300/- on or before 28.07.2011. However as the revision petitioner failed to pay cost, his application to set aside the Ex-parte Decree came to be

dismissed by the Trial Court.

5. In the said factual backdrop the revision petitioner filed an Interlocutory Application under Section 148 of C.P.C. seeking enlargement of Time towards payment of cost imposed earlier, however, as the said application was returned unnumbered the Revision petitioner is before this Court by way of this Civil Revision challenging the said docket order of return.

6. On perusal of the Docket Order, it is seen that the one lined Order of Trial Court denotes the petition as not maintainable in view of the dismissal of earlier application to set aside the Ex-parte Decree.

7. Whereas the application presented by the petitioner shows that he claiming to be out stationed at Chennai due to business and claiming and that he was not informed by his counsel as to the date or order of payment directing to pay cost has filed the said application under Section 148 of C.P.C. seeking enlargement of Time.

8. On further perusal of the records, though very many contentions are being raised, this Court finds that the Learned Trial

Judge has misconstrued the revision petitioner's application for Enlargement of Time as though an application for setting aside Ex-parte decree was again filed by the revision petitioner.

9.It is needless to say that the scope of an application under Section 148 of C.P.C. is enabling the Court in appropriate cases to enlarge the time even if the original time has expired for valid reasons. At any stretch of imagination it cannot be construed as a fresh or second application under very same provision seeking same relief.

10.Thus the return of petitioner's application by the Trial Court is found improper and infirm and accordingly there shall be a direction to the Trial Court to number the said application filed under Section 148 of C.P.C. The revision petitioner is directed to file the said application within a week from the date of receipt of a copy of this order.

11.In the result:

- (a) this Civil Revision Petition is allowed, on condition that the petitioner shall pay a cost of Rs.2,000/- to the respondent herein /petitioner within a period of two weeks from the date of receipt of a copy of this order.

b) thereafter, the revision petitioner is directed to file a memo to that effect before the Trial Court and on receipt of the memo the Trial Court is directed to number the application filed under Section 148 of C.P.C. and to pass positive order within a period of one month thereafter by giving notice to either parties.

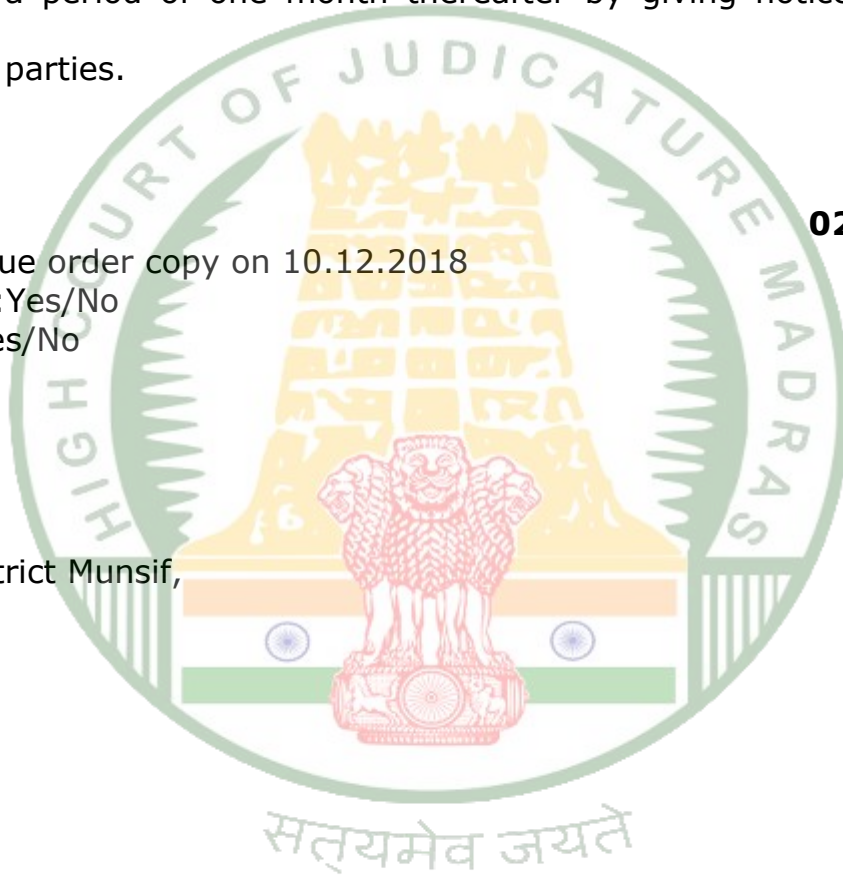
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Note: Issue order copy on 10.12.2018
Internet: Yes/No
Index: Yes/No

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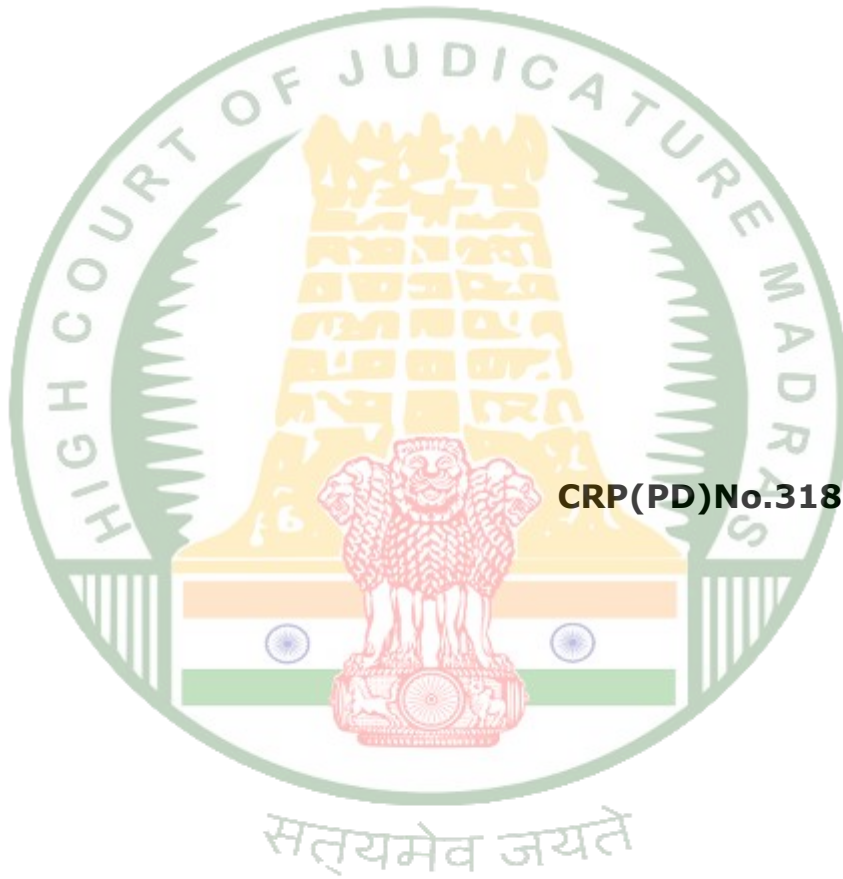
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M.V.MURALIDARAN, J.

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