

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4365 of 2012
& M.P.No.1 of 2012

R.Sampath
Proprietor T.V.S. Balamurugan Company,
New Town Railway Gate,
Vaniyambadi,
Vellore District. .. Petitioner

Vs.

Moovendran
No.34, Gandhi Street,
Udayendhiram,
Ambur Taluk,
Vellore District. .. Respondent

PRAYER: Civil Revision Petition filed Under Section 115 of the C.P.C. against the fair and decretal order dated 12.07.2012, made in I.A.No.476 of 2011 in M.C.O.P.No.246 of 2010 on the file of the Subordinate Judge, Vaniyambadi, Vellore District.

For Petitioner : Mr.V.Karthikeyan

For Respondent : Mr.R.Bharath Kumar

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 12.07.2012, made in I.A.No.476 of 2011 in M.C.O.P.No.246 of 2010 on the file of the Subordinate Judge, Vaniyambadi, Vellore District.

2. The petitioner is first respondent, respondent is the petitioner in M.C.O.P.No.454 of 2009 on the file of the Subordinate Court, Tirupattur. The respondent filed above claim petition, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident occurred on 26.12.2007. A notice was served on the petitioner, but petitioner did not appear before the Court. Hence, he was set *exparte*. The claim petition was posted for recording *exparte* evidence on number of hearings. Subsequently, the claim petition was transferred to Subordinate Court, Vaniyambadi from Subordinate Court, Tirupattur. The petitioner filed an application in I.A.No.476 of 2011, to condone the delay on 295 days in filing the petition to set aside the *exparte* award.

3. According to the petitioner, after receipt of notice, he felt ill and was taking treatment at Wallajah. After transfer to Subordinate Court, Vaniyambadi, no notice was served on the petitioner. In the circumstances, prayed for condonation of delay in filing the petition to set aside the exparte award.

4. The respondent filed counter affidavit and denied all the averments made by the petitioner and submitted that the petitioner has not furnished any details of treatment taken by him and has not given any valid reason for condonation of delay.

5. The learned Judge, considering the materials on record, dismissed the application on the ground that the petitioner has not given any valid reason for condonation of delay.

6. Against the said order dated 12.07.2012, made in I.A.No.476 of 2011 in M.C.O.P.No. 246 of 2010, the present civil revision petition is filed by the petitioner.

7. When the civil revision petition is taken up for hearing, the learned counsel appearing for the petitioner submitted that as per orders of this Court, dated 30.11.2012, he deposited a sum of Rs.25,000/- to the credit of M.C.O.P.No.246 of 2010. After transfer to Subordinate Court, Vaniyambadi, the M.C.O.P.No.454 of 2009 on the file of the Subordinate Court, Tirupattur has been renumbered as M.C.O.P.No.246 of 2010 and also submitted that the petitioner will deposit another sum of Rs.50,000/- to the credit of M.C.O.P.No.246 of 2010. Hence, the petitioner may be given an opportunity to put forth his case on merits and prayed for allowing the application to condone the delay in filing the application to set aside the exparte award.

8. The learned counsel appearing for the respondent submitted that the petitioner has not given any reason for condoning the delay in filing the petition and prayed for permission to withdraw the amount by the respondent.

9. Heard the learned counsel appearing for both the sides and perused the materials on record.

10. The petitioner has filed an application to condone the delay in filing the application to set aside the exparte award. According to the petitioner, he was suffering from Jaundice and was taking treatment and no notice was served on him, when the M.C.O.P. was transferred to Subordinate Court, Vaniyambadi from Subordinate Court, Tirupattur. The respondent has not denied the averments of the petitioner that no notice was sent to the petitioner from Subordinate Court, Vaniyambadi, when the M.C.O.P was transferred from Subordinate Court Tirupattur and re-numbered as M.C.O.P.No.246 of 2010.

11. In view of the above facts and taking into consideration the contention of the counsel for the petitioner that the petitioner is ready to deposit a sum of Rs.50,000/- to the credit of M.C.O.P.No.246 of 2010, on the file of Subordinate Court, Vaniyambadi, within a period of two weeks from the date of receipt of a copy of this order. The order of the learned Subordinate Judge is set aside. I.A.No.476 of 2011 is allowed, on deposit of a sum of Rs.50,000/- to the credit of M.C.O.P.No.246 of 2010. On such deposit, the respondent is permitted to withdraw Rs.25,000/-.

12. The learned Subordinate Judge, Vaniyambadi is directed to dispose the application to set aside the exparte order, within a period of three weeks on deposit of Rs.50,000/- and dispose the M.C.O.P, within a period of three months from that date.

13. With the above observation, the civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

26.07.2017

Index : Yes/No

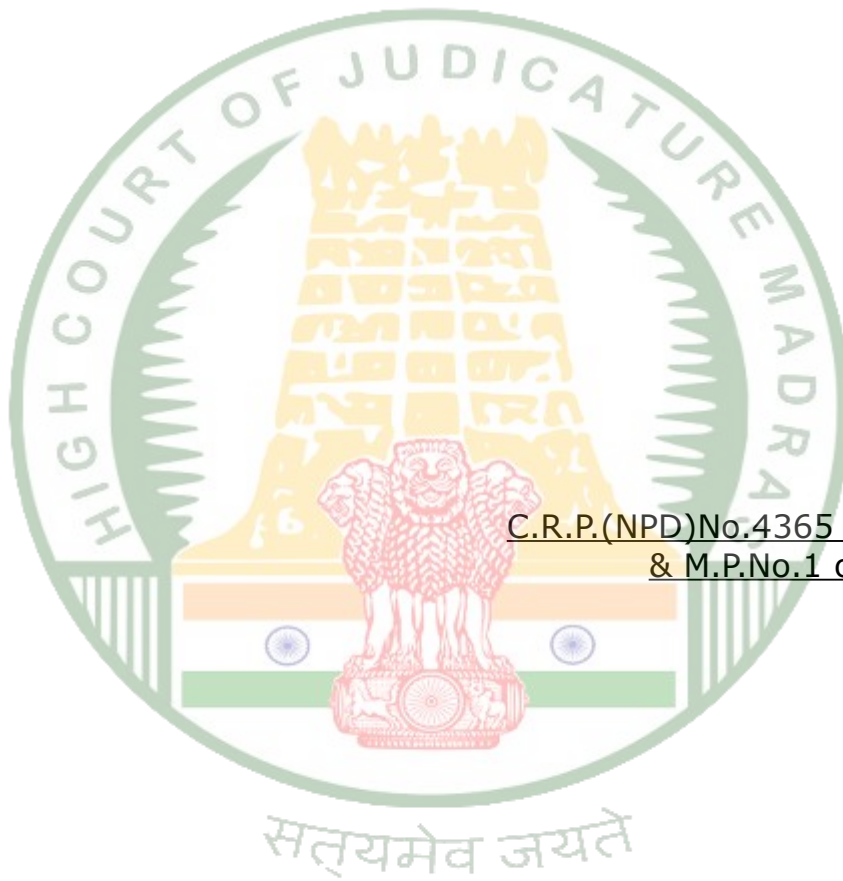
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To

1. The Proprietor
T.V.S. Balamurugan Company,
New Town Railway Gate,
Vaniyambadi,
Vellore District.
2. The Subordinate Judge, Vaniyambadi,
Vellore District.
3. The Principal District Judge, Nagapattinam

V.M.VELUMANI, J.

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