



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2017

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD)No.2285 of 2017

and

C.M.P. (MD)No.11097 of 2017

V.Durairaj :Petitioner/Petitioner/Appellant

vs.

1.M.C.D.A.Rajan

2.S.Saroja

: Respondents/Respondents/Respondents

PRAYER : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 07.04.2017 passed in I.A.No.2 of 2017 in R.C.A.No.3 of 2007, on the file of the Principal Subordinate Judge, Tirunelveli.

For Petitioner :Mr.M.P.Senthil

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 07.04.2017 passed in I.A.No.2 of 2017 in R.C.A.No.3 of 2007, on the file of the Principal Subordinate Judge, Tirunelveli.

2. The petitioner is the appellant in R.C.A.No.3 of 2006, on the file of the Principal Subordinate Court, Tirunelveli. Due to the absence of this petitioner/appellant on 28.07.2016, the appeal was dismissed for default. The petitioner submitted that the petitioner was not able to attend the Court on that date, since he was not doing well and his failure to attend the Court on 28.07.2016 is neither wilful nor wanton. Hence, he filed an application in I.A.No.2 of 2017 to restore the appeal.

3. The learned Judge has dismissed the application by stating that on 14.06.2016, 16.06.2016, 21.06.2016, 24.06.2016, 29.06.2016, 11.07.2016, 18.07.2016 and 26.07.2016 both the parties were absent and on 26.07.2016, this Court directed the petitioner/appellant to appear and argue the case on 28.07.2016 and on that day, since the petitioner/appellant was absent, the case was dismissed for default. Against which, the petitioner/appellant filed the present Civil Revision Petition.



4. The learned Counsel for the petitioner/appellant would submit that on earlier occasions, both parties were absent and on 28.07.2016 only, the petitioner/appellant was absent, since he was not well and hence, he prayed for one more opportunity to the petitioner.

5. Heard the learned Counsel for the petitioners and perused the materials available on record.

6. On a perusal of the order passed by the trial Court, it could be seen that the learned Judge has dismissed the application by stating that both parties were absent in various dates and on the particular date, the petitioner/appellant was absent and hence, the petition was dismissed for default. However, considering the facts and circumstances of the case and in the interest of justice, this Court feels that one more opportunity shall be given to the petitioner/appellant to conduct their case on terms and accordingly the order passed in I.A.No.2 of 2017 in R.C.A.No.3 of 2007, on the file of the learned Principal Subordinate Judge, Tirunelveli is set aside on condition that the petitioner shall pay a sum of Rs.1,000/- (Rupees One Thousand Only) to the Legal Aid Service Authority, attached to this Bench, within a period of one week from the date of receipt of a copy of this order, failing which, this Civil Revision Petition shall automatically be dismissed without further reference to this Court.

7. In the result, the Civil Revision Petition is allowed with the above condition. No costs. Consequently, the connected Miscellaneous Petition is closed.

sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

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To

The Principal Subordinate Judge, Tirunelveli.

+1cc to MR.M.P.Senthil, Advocate in SR.No.91361

GJM/KKR/SAR-I-8.1.18-2P-3C

C.R.P. (PD) (MD) No.2285 of 2017
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