

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.123 of 2014
and M.P.No.1 of 2014

K.Nagaraj

.. Petitioner

Vs.

R.Venkatesan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 24.09.2013 made in I.A.No.37 of 2013 in O.S.No.6 of 2007 on the file of the Additional Special Court, Krishnagiri.

For Petitioner : Mr.E.Prabhu for
Mr.M.Sathiavel

For Respondent : Mr.N.E.A.Dinesh for
Mr.V.Nicholas

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 24.09.2013 made in I.A.No.37 of 2013 in O.S.No.6 of 2007 on the file of the Additional Special Court, Krishnagiri.

2. The petitioner is defendant and respondent is plaintiff in O.S.No.6 of 2007 on the file of the Additional Special Court, Krishnagiri. The respondent filed the said suit for recovery of a sum of Rs.2,41,000/-. The petitioner filed written statement on 11.08.2007 and subsequently, he did not contest the suit. An exparte decree was passed on 28.07.2011. The respondent filed E.P.No.57 of 2012 for arrest of the petitioner and detain him in civil prison till the realisation of the decretal amount. The petitioner entered appearance in the said E.P. on 12.06.2012 and took time upto 17.12.2012 for filing counter. But the petitioner did not file counter and he was set exparte in the E.P. An order of arrest was passed on 07.01.2013 and E.P. was adjourned to 04.02.2013. The petitioner was arrested and produced before the Court on 21.03.2013. He paid a sum of Rs.10,000/- and he was released. Thereafter, he paid amounts on various dates and totally, he paid a sum of Rs.25,000/- and subsequently, he did not pay any amount. The petitioner filed the present I.A.No.37 of 2013 in O.S.No.6 of 2007 under Section 5 of the Limitation Act to condone the delay of 703 days in filing application to set aside the exparte decree dated 28.07.2011.

3. According to the petitioner, his previous counsel did not inform him about the ex parte decree. On receipt of notice in the E.P., the petitioner contacted his previous counsel, who took signature in the affidavit to file application to set aside the ex parte decree and did not file the said application. Subsequently, he engaged the present counsel and filed the present application and contended that the delay is neither wilful nor wanton.

4. The respondent filed counter affidavit and opposed the said application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and the fact that the petitioner has not disputed his liability to pay the decretal amount, blaming his previous counsel, filed the present application to condone the delay in filing the application to set aside the ex parte decree after two years of ex parte decree and one year after his knowledge, allowed the application on condition that the petitioner to deposit a sum of Rs.1,20,000/- i.e., 50% of the suit claim into Court on or before 28.10.2013.

6. Against the said order dated 24.09.2013 made in I.A.No.37 of 2013 in O.S.No.6 of 2007, the present Civil Revision Petition is filed by the petitioner.

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

8. The learned counsel for the petitioner submitted that the petitioner is ready to deposit a sum of Rs.60,000/- instead of Rs.1,20,000/- i.e., 25% of the suit claim and an opportunity may be given to the petitioner to contest the case on merits.

9. Considering the above facts and the payment already made by the petitioner in the E.P., the order of the learned Judge is modified directing the petitioner to deposit a sum of Rs.60,000/- instead of Rs.1,20,000/- into Court within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the learned Judge is directed to take up the application filed by the petitioner under Order IX Rule 13 C.P.C. and also to dispose of the suit in O.S.No.6 of 2007 within a period of four months thereafter.

10. With the above modification, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

22.02.2018

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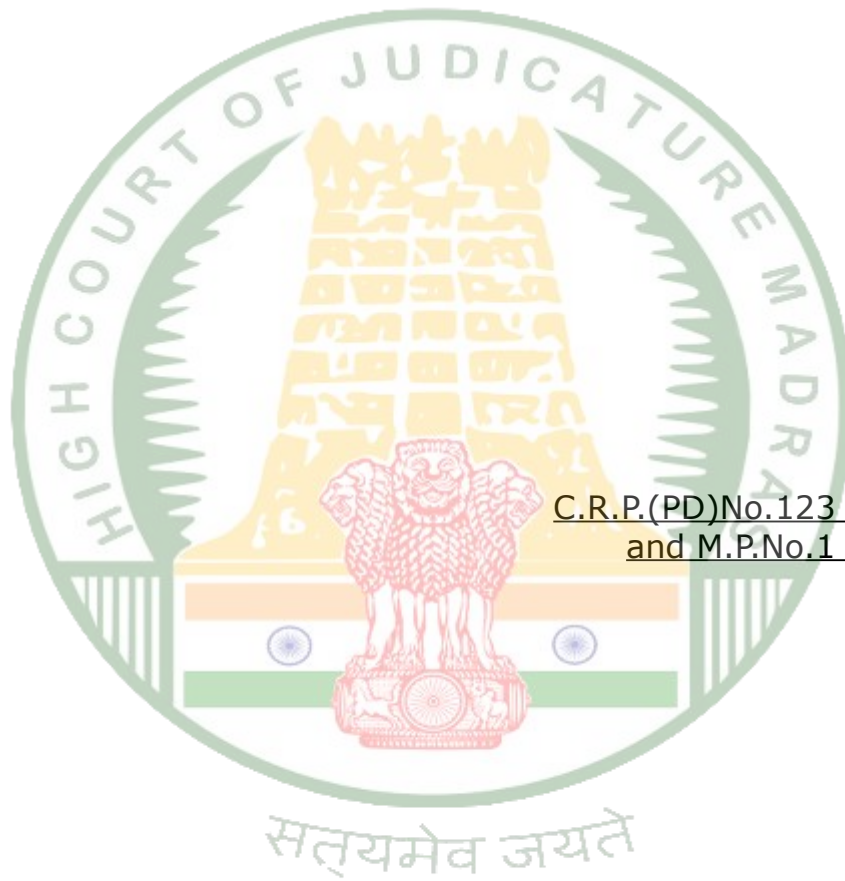
To
The Additional Special Judge, Krishnagiri.



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V.M.VELUMANI,J.

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