

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.01.2018

Coram

THE HON'BLE MR. JUSTICE M.DURAISWAMY

C.M.A.No.465 of 2016 &
C.M.P.No.3550 of 2016

N.Vani

... Appellant

v.

Vasu

... Respondent

Civil Miscellaneous Appeal filed under Order 43 Rule 1 of CPC against the order dated 07.09.2015 passed in I.A.No.77 of 2015 in O.S.No.7398 of 2012 on the file of XVIII Additional City Civil Court, Chennai.

For Appellant : Mr.Na.Malaisaravanan
For Respondent : Mr.S.Janarthanam

J U D G M E N T

Challenging the fair and final order passed in I.A.No.77 of 2015 in O.S.No.7398 of 2012 on the file of XVIII Additional City Civil Court, Chennai, the defendant has filed the above Civil Miscellaneous Appeal.

2. The plaintiff filed the suit in O.S.No.7398 of 2012 for recovery of a sum of Rs.20,00,000/- (Rupees twenty lakhs only) together with interest. Since the defendant failed to file his written statement, he was set ex-parte and an ex-parte decree was passed. Thereafter, the defendant took out an application in I.A.No.178 of 2014 to set aside the ex-parte order, which was allowed by the trial Court on 02.02.2015 on payment of cost of Rs.5,000/- (Rupees five thousand only). It is represented by the learned counsel appearing for the appellant that challenging the order passed in I.A.No.178 of 2014 the defendant preferred a Civil Revision Petition, however, the same was not numbered and the Civil Revision Petition is in SR stage.

3. Subsequently, since the defendant failed to appear before the trial Court, an ex-parte decree was passed on 27.02.2015, which was dismissed by the trial Court finding that

the defendant has not given sufficient reason for non appearing before the trial court on 27.02.2015. While dismissing the application, the trial Court also observed that the suit was called twice on 10.02.2015, however, the defendant was not present in the court to contest the suit.

4. Mr.Na.Malaisaravanan, learned counsel appearing for the appellant-defendant submitted that in the interest of justice an opportunity may be given to the defendant to contest the suit and that the defendant is willing to pay the cost amount of Rs.5,000/- to the respondent-plaintiff.

5. Mr.S.Janarthanam, learned counsel appearing for the respondent-plaintiff submitted that the defendant had remained absent before the trial Court only to drag on the matter and therefore, time limit may be fixed for the disposal of the suit.

6. Having regard to the submissions made by the learned counsel on either side, since the petitioner has satisfactorily explained the reasons for his non-appearance on 27.02.2015, in the interest of justice, I am of the view that the defendant can be given one more opportunity to contest the suit on merits.

7. Accordingly, the fair and decreetal order passed in I.A.No.77 of 2015 in O.S.No.7398 of 2012 are set aside on condition that the appellant-defendant paying a sum of Rs.5,000/- [Rupees five thousand only] to the respondent-plaintiff within a period of two weeks, from the date of receipt of a copy of this judgment. On payment of cost amount of Rs.5,000/- to the respondent-plaintiff, the application in I.A.No.77 of 2015 shall stand allowed and the ex-parte decree dated 27.02.2015 passed in O.S.No.7398 of 2012 shall stand be set aside. It is open to the appellant-defendant to pay the said sum of Rs.5,000/- to the learned counsel appearing for the respondent in this appeal before this Court, within the stipulated time. The XVIII Additional Judge, City Civil Court, Chennai, is directed to dispose of the suit in O.S.No.7398 of 2012 on merits and in accordance with law, within a period of three months, from the date of receipt of a copy of this judgment.

With these observations, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CO)

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Sub Asst. Registrar

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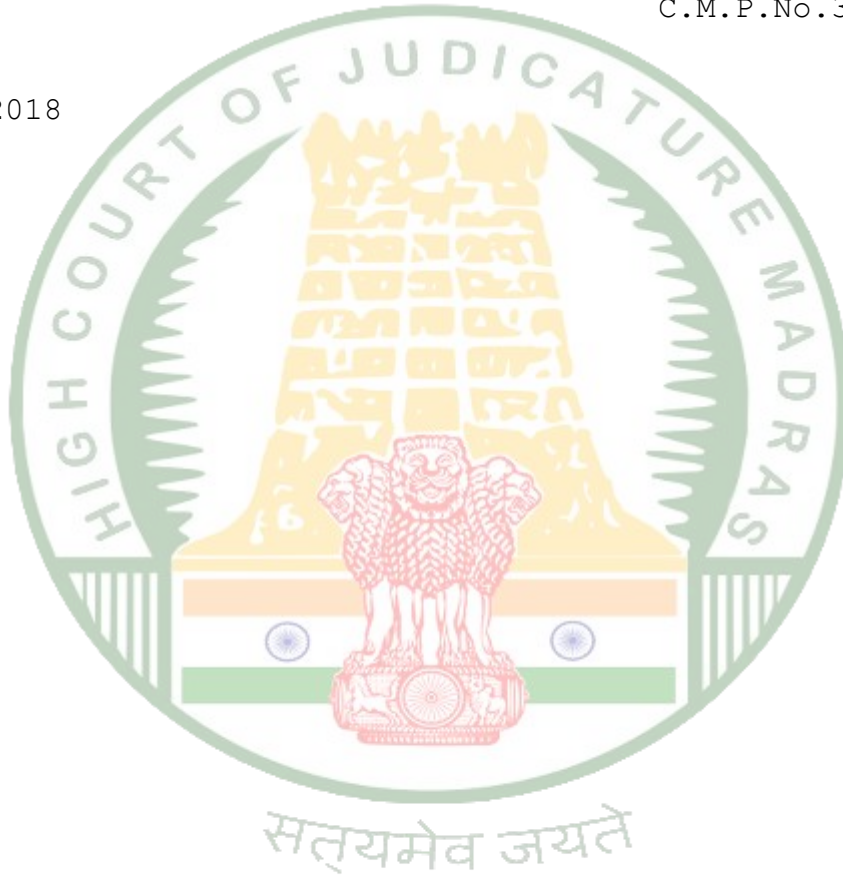
The XVIII Additional Judge
City Civil Court
Chennai.

+ 1 cc to Mr.Na.Malaisaravanan Advocate,SR.7076

+ 1 cc to Mr.S.Janarthanam Advocate,SR.6908

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