

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

C.R.P.(PD).No. 514 of 2015
and M.P.No.1 of 2015

V. Sundara Naicker ... Petitioner

Versus

S.N. Sundara Mudaliar ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to allow this Civil Revision Petition and to set aside the fair and decree passed in I.A.No.7853 of 2013 in I.A.No.588 of 2012 in O.S.No.3181 of 2010 dated 09.01.2015 on the file of the learned III Assistant City Civil Court, Chennai.

For Petitioner : Mr.G.Veerapathiran

For Respondent : No appearance

ORDER

The order under the challenge in the present application is rejection of the petitioner's application in I.A.No.7853 of 2013 for restoring his earlier application in I.A.No.588 of 2012 to condone the delay in filing an application to set aside the dismissal order passed in I.A.No.16751 of 2011 in O.S.No.3181 of 2010, which was filed under Section 9 of the Madras City Tenant Protection Act.

2.It is seen that the earlier application in I.A.No.16751 of 2011 filed under section 9 of the Madras City Tenant Protection Act came to be dismissed for non-appearance of the petitioner/defendant. Thereafter, the petitioner filed an application in I.A.No.588 of 2012 seeking for restoring the above said application. The Court below had initially allowed the application in I.A.No.588 of 2012 on terms of payment of Rs.1000/- on or before 27.02.2013. Since the petitioner did not pay the cost in time, the said application in I.A.No.588 of 2012 was dismissed on 28.02.2013. Again he had filed an application in I.A.No.7853 of 2013 to set aside the said dismissal order dated 28.02.2013 passed in I.A.No.588 of 2012 and to restore the same. Even this application (I.A.No.7853 of 2013) was rejected on 09.01.2015, which order is under challenge in the present revision. The reason adduced by the Court below for rejecting the application is that there is no proper explanation given by the petitioner/defendant for the non-payment of the cost of Rs.1000/-.

3.The learned counsel for the petitioner submits that though he had given his explanation in the affidavit filed along with the application to set aside the dismissal order, that the bundle was misplaced and it was not traceable, the trial Court had failed to consider this aspect. Though the petitioner has not elaborately given the reason for the non-payment of the cost, in the affidavit he had stated that he traced the case bundle only on the date of filing the application.

4. In my view, the petitioner could have been given an opportunity by increasing the cost payable by him. Hence, the impugned order in I.A.No.7853 of 2013 dated 09.01.2015 passed by the Court below is set aside. Consequently, the petitioner herein is directed to pay a cost of Rs.10,000/- to the respondent herein, by depositing the same to the credit of O.S.No.3181 of 2010 before the Trial Court, within a period of ten days from the date of receipt of a copy of this order.

5. With the above observations, the Civil Revision Petition is ordered. No costs. Consequently, the connected miscellaneous petition is also closed.

19.12.2018

Index : Yes/No

Internet : Yes/No

Speaking / Non-speaking order

rli/klt

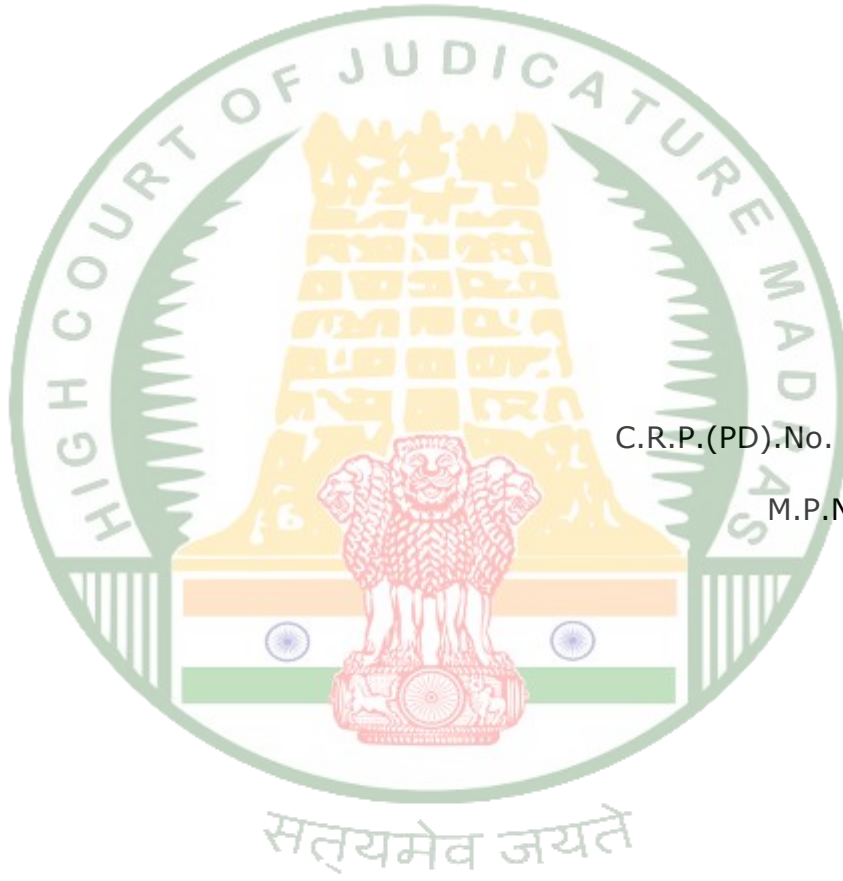
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To

The III Assistant City Civil Court, Chennai.

M.S.RAMESH.J,

rli/klt



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