

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD) No.4352 of 2017 and C.M.P.No.20661 of 2017

R.Subramaniam ... Petitioner/Defendant

Vs

R.Ramasamy ... Respondent/Plaintiff

This Civil Revision Petition is filed under Section 115 of C.P.C. to set aside the fair and decreetal order of the Subordinate Judge, Tiruchengode, dated 23.11.2016 made in I.A.No.475 of 2014 in O.S.No.99 of 2009.

For Petitioner : Mr.S.Sivasankar
For Respondent : Mr.S.Viswanathan for
M/s.Dass & Viswa Associates

ORDER

According to the petitioner, the respondent herein has filed a suit in O.S.No.99 of 2009 against the petitioner before the Sub Court, Tiruchengode for recovery of sum of Rs.1,92,000/- based on the alleged promissory note, dated 14.1.2008. In the aforesaid suit, the petitioner was set exparte and an

exparte decree has been passed on 12.1.2010. Thereafter, the petitioner has filed an application to set aside the exparte decree under Order IX Rule 13 C.P.C. Due to some defect, said application was returned. Thereafter, the petitioner has filed an application in I.A.No.475 of 2014 to condone the delay of 1379 days in representing the petition to set aside the exparte decree. However, the court below erroneously dismissed the said application. Challenging the order, the present Civil revision petition has been filed before this Court.

2 According to the learned counsel for the petitioner, the reason stated in the affidavit, is that the counsel presented the application on 21.10.2010. Thereafter, the said application was returned for some defects and the same was received by the counsel for the petitioner. The said papers were mixed with old bundles in the office of the counsel for the petitioner and later it was traced out and filed along with the condone delay application. It is stated that only due to bonafide reason, there is a delay in representing the said papers. Hence, the order of the court below is liable to be set aside.

3 The learned counsel for the respondent would submit that the respondent has filed the suit for recovery of money on the basis of the promissory note. An exparte decree was passed in the year 2010. Even though

the petitioner has filed an application within time to set aside the exparte decree, however with an intention to drag on the proceedings, the said application was represented after a delay of 1379 days. Therefore, without sufficient cause for condoning the inordinate delay, the present application has been filed. However, in the event of allowing the said application, the court may impose cost on the petitioner.

4 Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials on record.

5 The reason stated in the affidavit is that the relevant papers were mixed with old case bundles and hence could not be traced out. However, the same was represented with delay. Counsel for the respondent even though objected for allowing the civil revision petition, taking into consideration of the facts and circumstances of the case, this Court is inclined to pass appropriate orders by imposing cost on the petitioner, to enable the petitioner to contest the suit on merit.

6 Considering the facts and circumstances of the case and in the interest of justice, this Court is inclined to give an opportunity to the

D.KRISHNAKUMAR,J.

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petitioner to contest the case on merits, but imposing heavy cost to the respondent. Therefore, the order passed by the learned Subordinate Judge, Tiruchengode, dated 23.11.2016 in I.A.No.475 of 2014 in O.S.No.99 of 2009 is set aside. I.A.No.475 of 2014 in O.S.No.99 of 2009 is allowed.

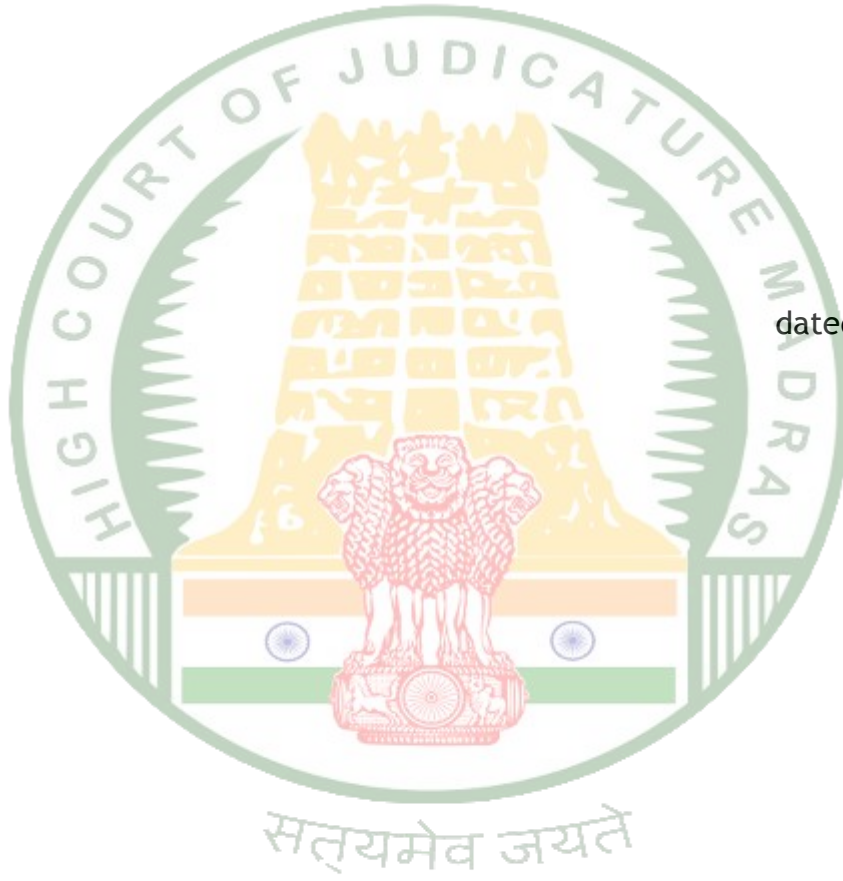
Accordingly, the Civil revision petition is allowed on payment of cost of Rs.25,000/- payable by the petitioner to the respondents and Rs.5000/- payable by the petitioner to the Tamilnadu Mediation and Conciliation Centre, High Court, Madras within a period of four weeks from the date of receipt of a copy of this order, failing which the civil revision petition stands dismissed automatically. Connected miscellaneous petition is closed.

1.02.2018

Index: Yes/No
Internet:Yes/No
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To
The Subordinate Judge, Tiruchengode.

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dated: 1.2.2018

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