

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (NPD) No. 2449 of 2016
and
CMP. No. 12702 of 2016

Thanakodi

.. Petitioner

Vs

Udhayakumar

.. Respondent

PRAYER: This Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order passed in I.A. No. 218 of 2014 in O.S. No. 129 of 2010 dated 01.03.2016 on the file of the Principal Sub Court, Tindivanam.

For Petitioner : Mr. M. Devaraj

For Respondent : Mr. Venkatasamy Babu

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order passed in I.A. No. 218 of 2014 in O.S. No. 129 of 2010 dated 01.03.2016 on the file of the Principal Sub Court, Tindivanam.

2. The respondent has filed the suit in O.S. No. 129 of 2010 against the petitioner claiming a sum of Rs.1,76,800/- with interest, alleging that the petitioner has executed a promissory note for a sum of Rs.1,30,000/-, agreeing to repay the same with interest at the rate of 12% per annum. An ex-parte decree was passed on 29.11.2012. The learned counsel for the petitioner would submit that the petitioner was aware of the ex-parte decree, when the court Aameena came to attach the petitioner's property in E.P. No. 215 of 2013.

3. According to the petitioner, he was not residing in his village and was working as a Tourist Guide at Bangalore. Hence, the petitioner was not aware of the ex-parte decree. The petitioner has also entered into the witness box and examined himself as a witness. Therefore, the delay in filing the application is only due to the above bonafide reasons and not wilful or wanton. Due to the aforesaid circumstances, the petitioner was unable to appear before the trial court to contest the suit.

4. The learned counsel for the petitioner would submit that if an opportunity is given to the petitioner, he would appear before the court below and contest the case on merits. The petitioner denies the aforesaid claim amount and the alleged pro note, which has been misused by the respondent. Without considering the submission of the petitioner, the court below has erroneously dismissed the application. Challenging the same, the present revision petition has been filed before this Court.

5. The learned counsel for the respondent would submit that in the counter statement, the respondent has specifically stated that the petitioner was the President of the Village Milk Producers Cooperative Society and is also a Trustee of a Temple in the village. Hence, the contention of the petitioner is denied in the counter statement. However, if this Court is inclined to give an opportunity to the petitioner to contest the case on merits, the same may be allowed by imposing heavy cost on the petitioner, since there is an inordinate delay and issue a direction to the court below to dispose of the suit.

6. Considered the submission of both the parties and perused the material available on record.

7. It is seen from the depositions that the petitioner was a President, about six years prior to the date of passing of the ex-parte decree in the suit. He has also categorically stated that he went to Bangalore to work and lead his livelihood. Learned counsel for the respondent would not have any serious objection, if the application is allowed on payment of cost.

8. Considering the aforesaid submission of the parties, in the interest of justice, this Court is inclined to pass the following order :

1. The order passed by the court below in I.A. No. 218 of 2014 in O.S. No. 129 of 2010 dated 01.03.2016 is hereby set aside, on condition, that the petitioner shall pay a sum of Rs.35,000/- to the respondent and Rs.5000/- to the Tamil Nadu Mediation Centre, Chennai, within a period of four weeks from the date of receipt of a copy of this order.
2. In the event of complying with the conditional order by the

petitioner, the application filed under Order 9 Rule 13 by the petitioner stands allowed.

3. On instructions by the parties, the learned counsel undertakes to cooperate for the disposal of the suit.
4. Considering the fact that the suit is of the year 2010, the trial court is directed to dispose of the suit as expeditiously as possible, preferably on or before 30.08.2018.
5. In the event of the petitioner fails to comply with this conditional order, the revision petition will be dismissed.

9. The Civil Revision Petition is disposed of, with the above directions. Consequently, the connected Miscellaneous Petition is closed. No costs.

सत्यमेव जयते

12.03.2018

Index: Yes/ No

Speaking Order/Non Speaking Order

[Issue order copy on 26.04.2018]

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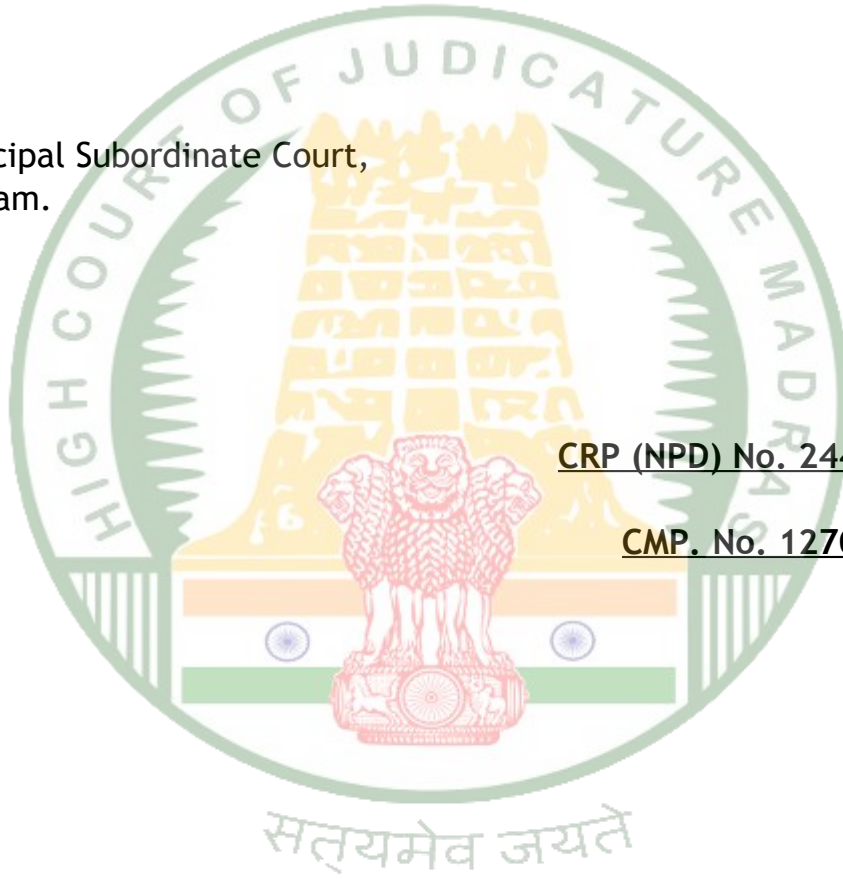
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D. KRISHNAKUMAR J.,

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To

The Principal Subordinate Court,
Tindivanam.



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