

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CMP.No.8518 of 2016
and
CRP.NPD.No.SR96665 of 2015

Govindasamy

.. Petitioner

Vs

1.S.Rajendran

2.Appukutti

.. Respondents

PRAYER

Civil Miscellaneous Petition filed under Section 151 of the Civil Procedure Code to grant leave to the petitioner to file the above Civil Revision Petition in CRP.NPD.No.SR96665 of 2015 against the fair and decretal order dated 14.09.2009 made in IP.No.5 of 2009 on the file of the learned Subordinate Court, Pollachi

For Petitioner

: Mr.N.Manokaran

For Respondents

: Mr.P. Valliappan for R2

: No Appearance for R1

ORDER

According to the revision petitioner, the revision petitioner has filed asuit in OS.No.17 of 2004 on the file of the Subordinate Court, Dharapuram against the first respondent for recovery of money on the basis of promissory note dated 21.05.2002 executed by the first respondent for Rs.1,50,000/-, in the aforesaid suit, the revision petitioner has filed an application in IA.No.66 of 2004 for attachment before Judgment. Subsequently, the revision petitioner came to know that the first respondent has filed a creditor IP.No.5 of 2009 on the file of the Subordinate Court, Pollachi. In the aforesaid IP, the second respondent is a party. The second respondent was set exparte and exparte decree was passed on 14.09.2009. According to the revision petitioner, the first respondent has obtained the exparte order in a fraudulent manner by colluding with the second respondent. Therefore, challenging the aforesaid order, the revision petitioner has filed the present Civil Revision Petition before this Court and notice has been served to the first respondent. None appeared for the first respondent before this Court.

2. Mr.P.Valliappan, learned counsel appeared for the second

respondent would submit that the CRP itself is not maintainable before this Court. According to the second respondent, under Section 75 of Insolvency Act, 1920, the revision petitioner has to prefer an appeal before the District Court. Therefore, the Civil Revision Petition is not maintainable and the same is liable to be dismissed.

3. In reply to the above submissions made by the learned counsel for the second respondent, the learned counsel for the revision petitioner would submit that in the light of the decision of the Hon'ble Division Bench of this Court in the case of *K.Balakrishnan Vs. S.Dhanasekar*, reported **2018-1-LW-599**, the order passed by the court below is not in consonance with the Section 2 (9) of the Civil Procedure Code. Therefore, the trial court merely passed the exparte order without adjudicating the issues involved in the petition. Therefore, the Civil Revision Petition under Article 227 of the Constitution of India is maintainable before this Court. There is no reason has been stated in the affidavit for the laches in filing the Civil Revision Petition. Further, when there is a provision for filing an appeal against the order, there shall be an opportunity to the revision petitioner to file an appropriate application before the court below to satisfy the sufficient cause for

condoning the delay in filing the appeal in consonance with the decision of the Hon'ble Division Bench of this Court in the case of *K.Balakrishnan Vs. S.Dhanasekar*, reported **2018-1-LW-599**. Therefore, at this stage, this Court is not inclined to entertain the Civil Revision Petition, when there is efficacious alternative remedy is available to the petitioner under the provision of the Act. Hence, Revision Petition is not maintainable before this Court. At this stage, Civil Revision Petition cannot be entertained and the same is liable to be dismissed.

4. In the light of the above facts and the circumstances of the case, by consent of both parties, this Court is inclined to pass the following orders.

(i) The revision petitioner is permitted to file an appeal before the Appellate court along with a condone delay application within the period of two weeks from the date of receipt of a copy of this Order.

(ii) The Appellate court is directed to permit the respondents to file counter statement within a period of two weeks thereafter, if so advised.

(iii) It is open to the revision petitioner to satisfy the Appellate court by invoking provisions under Section 14 of the Civil Procedure Code by excluding the period which the revision petition is pending before this Court.

(iv) In the event of the parties have complied with the above directions, the court below is directed to dispose of the above application as expeditiously as possible preferably on or before 30.06.2018 in accordance with law.

5. The Civil Miscellaneous Petition is disposed of with above directions. Consequently, the connected Civil Revision Petition is closed at the SR stage itself. No costs. The Registry is directed to return the original order in IP.No.5 of 2009 to the learned counsel for the revision petitioner after obtaining a copy of the same.

WEB COPY

07.03.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

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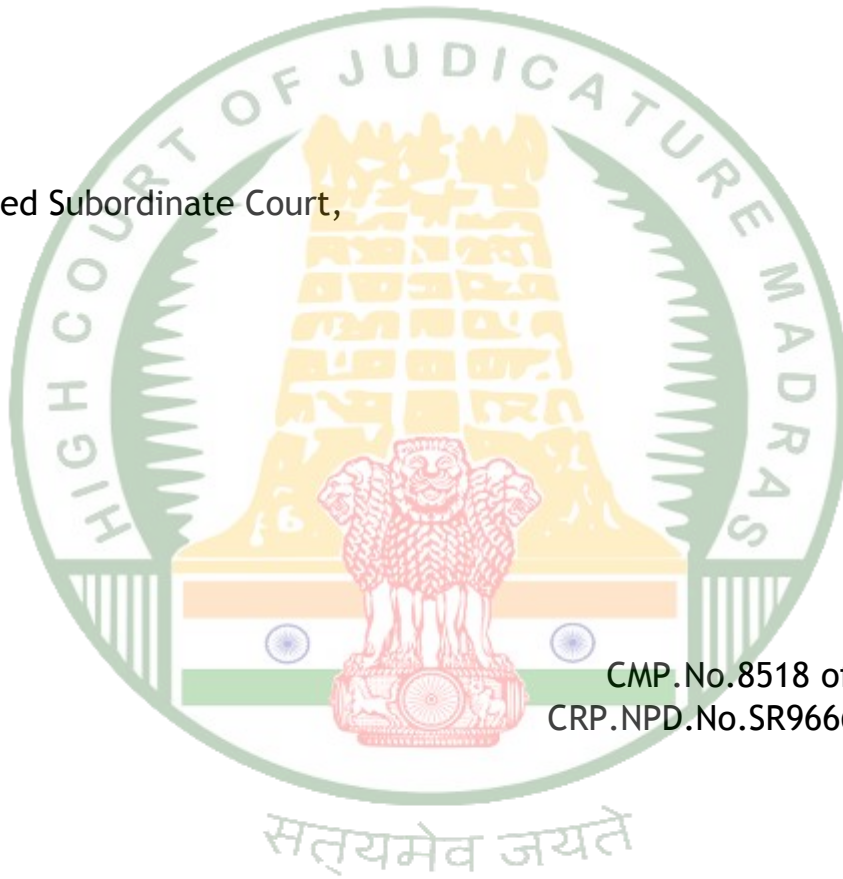
Note: Issue order copy on 13.03.2018

D. KRISHNAKUMAR J.,

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To

The learned Subordinate Court,
Pollachi



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