

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated : 20.12.2018****CORAM:****THE HONOURABLE MR.JUSTICE M.S.RAMESH****CRP(NPD)No.2969 of 2018**
and CMP No.17330 of 2018

Mr.S.Senthilbabu

... Petitioner

Vs.

M/s.Sri Lakshmi Enterprises,
Represented by its Managing Partner,
C.Balasubramanian,
Having their registered office at
No.30, Thirumalai Nagar,
Udayampalayam,
Ganapathy, Coimbatore.
Respondent

...

Prayer :- Civil Revision Petition has been filed under Section 115 of C.P.C., aggrieved by the order of dismissal dated 10.08.2018 passed in I.A.No.205 of 2018 in O.S.No.15 of 2016 on the file Learned 1st Additional District Judge, Coimbatore filed under Section 5 of the Limitation Act to condone the delay of 460 days to file the petition to set aside the ex parte decree passed against the petitioner.

For Petitioner : Mr.A.Saranraj

For Respondent : Mrs.Zeenath Begum

ORDER

Challenging the rejection of the application filed under Section 5 of the Limitation Act to condone the delay of 460 days to set aside the ex-parte decree dated 10.08.2018, the present Civil Revision Petition has been filed.

2.The reason adduced in the application before the Trial Court is that the petitioner's counsel could not be contacted and thereby he was not aware of the case status, which caused the delay. The reason adduced may not amount to a sufficient cause, as defined under Section 5 of the Limitation Act and as such, I do not find any infirmity in the findings of the Trial Court.

3.The learned counsel for the respondent submitted that the delay of 460 days is not only inordinate, but the petitioner has also not properly explained the delay. According to the learned counsel for the respondent, each and every day's delay has to be necessarily explained for the purpose of condoning the delay and the vague reason given by the petitioner herein that he could not contact his counsel after his marriage, cannot be relied upon.

Apex Court that, when condonation of an inordinate delay comes up for consideration, the merits of the case could also be looked into. In this background, the defence of the petitioner in the written statement, which he intends to file before the Trial Court, was looked into. It is stated therein that the plaintiff is not known to the defendant at all and the plaintiff is a close associate of one Sitharaman. These allegations maybe the subject matter of proof before the Trial Court. Nevertheless, when such a plea is put forth, there is a possibility that the petitioner may have a triable and arguable issue before the Trial Court. As such I am of the view that the petitioner/defendant could be given one opportunity.

5.However, this Court is also inclined to look into the prejudice that could be caused to the respondent herein, which could be compensated by imposing an exemplary cost on the petitioner herein.

6.In the light of the above observations, the order made in I.A.No.205 of 2018 in O.S.No.15 of 2016 dated 10.08.2018 is set aside and consequently, the delay of 460 days stands condoned, on condition that the petitioner pays a sum of Rs.75,000/- to the respondent herein by way of Demand Draft, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

7.In case, the petitioner succeeds in the suit in O.S.No.15 of

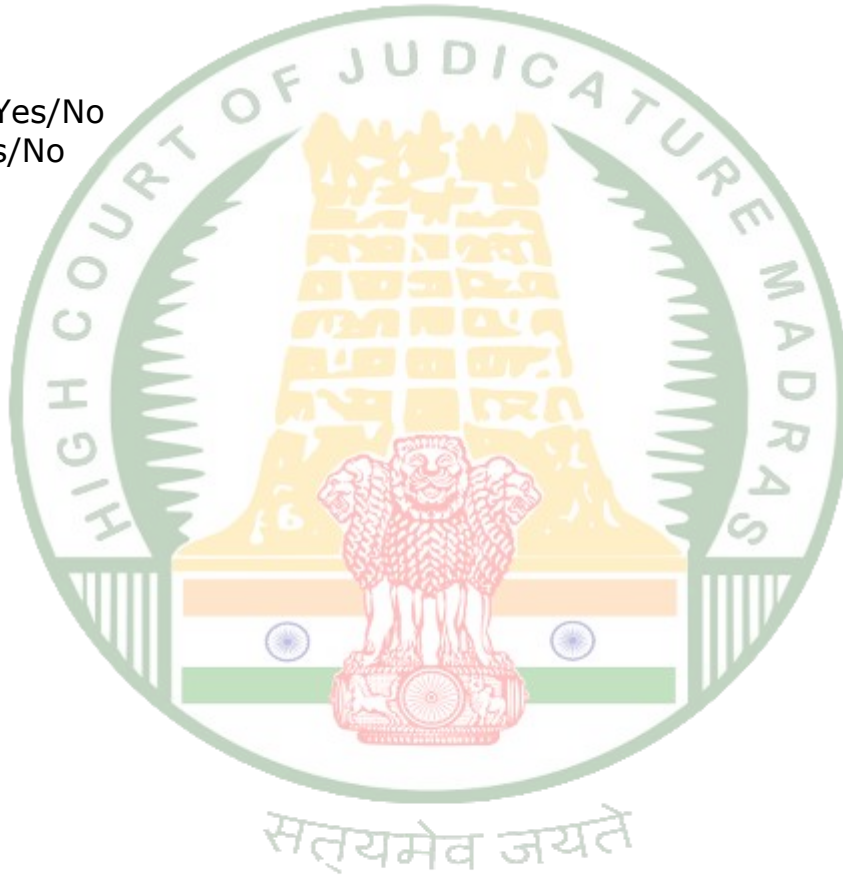
2016, the respondent herein shall refund a sum of Rs.50,000/- out of the cost of Rs.75,000/- to the plaintiff.

20.12.2018

Pam

Internet: Yes/No

Index: Yes/No



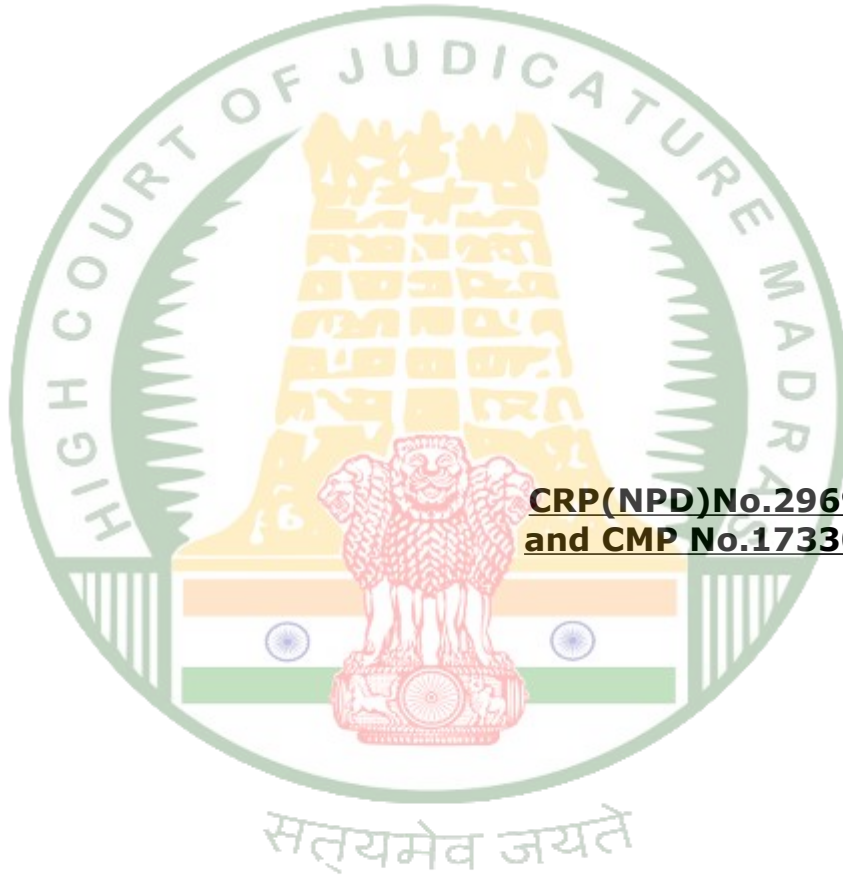
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To

The Additional District Judge, Coimbatore



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