



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) (PD) No.576 of 2016

and

C.M.P. (MD) No.2517 of 2016

Singer India Ltd.,

Represented by its Authorised representative,

Vinod Kumar, S/o.Harish Chandra,

A 26/4, 2nd Floor,

Mohan Co-operative Industrial Estate,

New Delhi - 110044.

... Petitioner/Respondent/Plaintiff

/Vs./

A.Thilagam

... Respondent/Petitioner/Defendant

Prayer: Civil Revision Petition - filed under Article 227 of the Constitution of India, to set aside the fair order and ex-order passed by the learned III Additional District Judge, Tirunelveli in I.A.No.139 of 2015 in O.S.No.115 of 2010 dated 16.09.2015 has to be revised by allowing the revision.

For Petitioner

: Mr.S.Nateshraaja

For Respondent

: Mr.T.Pon Ramkumar

ORDER

The plaintiff in O.S.No.115 of 2010 on the file of the III Additional District Judge, Tirunelveli is the revision petitioner herein. It is a suit for payment of money. In the said suit, the defendant filed a counter claim. The suit came to be dismissed for default. However, the counter claim which has to be adjudicated as if it is a suit by itself came to be dismissed on merits. Subsequently, at the instance of the plaintiff, O.S.No.115 of 2010 was restored.

2. The defendant, whose counter claim was dismissed on merits, applied for setting aside the decree dismissing his counter claim as if it was an exparte decree. He also filed I.A.No.139 of 2015 for the condonation of delay occasioned in filing such an application. Without noting that such an application itself is not maintainable in law, the Court below by the order impugned in this civil revision petition allowed I.A.No.139 of 2015. Questioning the same, the plaintiff has filed the present civil revision petition.

<https://hcservices.ecourts.gov.in/hcservices/>

3. Heard the learned counsel on either side.



4. It is seen that the counter claim was dismissed only on merits. It was not an exparte order. Therefore, only an appeal could have been filed by the defendant. Hence, the order impugned in this civil revision petition is liable to be set aside. Accordingly, it is set aside.

5. The respondent / defendant is at liberty to file a regular first appeal questioning the dismissal of her counter claim. The time taken in prosecuting I.A.No.139 of 2015 and time taken in contesting this civil revision petition, will stand excluded, while calculating the delay.

6. With these observations, this civil revision petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar(Records)

/True copy/

Sub Assistant Registrar(CS-III)

To

1.The III Additional District Judge, Tirunelveli.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1cc to Mr.T.PON RAMKUMAR, Advocate, SR.No.13645

+1cc to Mr.S.NATESH RAJA, Advocate, SR.No.89094

C.R.P. (MD) (PD) No.576 of 2016
08.10.2018

SM

KK/RSK/SAR-3/19.11.2018/2P-6C