

CRP No.672 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.07.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (PD) No.672 of 2013

M/s Gati Cargo

... Petitioner

Vs.

The New India Assurance Company Limited,
Bangalore Road, Hosur,
Rep. by its Divisional Manager.

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair order dated 15.12.2012 and decretal order dated 07.01.2013 passed in I.A.No.593 of 2012 in O.S.No.30 of 2004 by the Subordinate Judge, Hosur.

For Petitioner : Mr.J.Ravikumar

For Respondent : Mr.K.Vinod

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ORDER

The civil revision petitioner is the defendant in O.S.No.30 of 2004 on the file of the Subordinate Judge, Hosur.

2. The respondent/plaintiff filed the suit for recovery of damages from the revision petitioner. The present revision petitioner filed written statement and both the parties went for trial. One witness was examined on the side of the plaintiff and thereafter, since the said witness did not turn up for cross examination, the evidence on the side of the plaintiff was closed and posted for defendant side evidence. On the side of the defendant, one witness was examined as DW1 and thereafter, the suit was posted for arguments. At this stage, the respondent/plaintiff filed a petition in I.A.No.593 of 2012 in O.S.No.30 of 2004 before the Subordinate Judge, Salem under Section 151 of the Code of Civil Procedure to reopen the case of the plaintiff.

3. The learned Subordinate Judge, Salem allowed the said application on payment of costs of Rs.500/- vide his fair and decreetal order 15.12.2012. Aggrieved over the same, the present civil revision petition is filed.

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4. Mr.J.Ravikumar, learned counsel appearing for the civil revision petitioner contented that though several opportunities were given to the respondent/plaintiff, they did not avail those opportunities and when

the suit is posted for arguments, they have filed an application to reopen the case of the plaintiff. He also contended that the suit was dismissed for default on 13.07.2006 and the respondent/plaintiff filed a petition I.A.No.271 of 2010 under Section 5 of the Limitation Act along with a petition in I.A.No.56 of 2011 under Order IX Rule 9 of the Code of Civil Procedure. It is further contended by him that even though both the applications were allowed, and the case was posted for cross examination of PW1 for more than five occasions, the respondent/plaintiff did not bother to proceed the case further. He would therefore contend that the orders passed by the trial court is liable to be set aside.

5. Per contra, Mr.K.Vinod, learned counsel appearing for the respondent/plaintiff contended that since the PW1, who was examined on the side of the respondent/plaintiff quit the job, they could not produce the witness for cross examination. His further contention is that since the suit is filed by the respondent/plaintiff for recovery of damages caused by mis delivery/non delivery of goods entrusted with the defendant, an opportunity should be given to the respondent/plaintiff to prosecute the case.

6. It is true that the case was adjourned for more than five times for the cross examination of PW1. However, PW1 did not appear before the court. Subsequently, the evidence on the side of the plaintiff was closed and the suit was posted for defendant side evidence. On the side of the revision petitioner/ defendant, DW1 was examined and the suit is now posted for arguments.

7. In the decision in ***Robin Thapa Vs. Rohit Dora in Civil Appeal No.4507 of 2019***, the Honourable Supreme Court has held in paragraph No.8 thus:

Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties and litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

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The respondent New India Assurance Company had filed the suit in O.S.No.30 of 2004 for recovery of damages from the civil revision petitioner/defendant. In the facts and circumstances, the interest of

justice requires that an opportunity should be given to the respondent to put forth its case.

8. Accordingly,

(i) The civil revision petition is dismissed. No costs.

(ii) The Subordinate Judge, Hosur is directed to dispose of the suit in O.S.No.30 of 2004 within a period of three months from the date of receipt of a copy of this order and report the same to this court.

31.07.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
mst

To

The Subordinate Judge, Hosur.

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