

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(NPD).No.1742 of 2018

and

CMP.Nos.9551 of 2018 and 1619 of 2019

M/s.Rufi Rel Estates & Investments (Pvt) Ltd,
Rep. by its managing Director and Authorized Signatory
Mr.P.Murugan
Tower-2,
Senthil Nagar, Sowripalayam Road,
Coimbatore. ..Petitioner/Defendant

Vs

P.Vesli ..Respondent/Plaintiff

This Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decretal order dated 11.04.2018 made in CMP.No.950 of 2017 in A.S.SR.No. 45308 of 2017 on the file of the learned Principal City Civil Court at Chennai.

For Petitioner : Mr.T.Balaji

For Respondent : Mr.K.S.Kumar

ORDER

The above Civil Revision Petition is filed challenging the order in C.M.P.No.950 of 2017 in A.S.(SR).No.45308 of 2017. The said application has been filed by the revision petitioner for condoning the delay of 522 days in preferring the appeal.

2 The brief facts preceding the filing of the first appeal are as follows:

The respondent had filed suit O.S.No. 9345 of 2011, on the file of the learned XVI City Civil Judge, Chennai, against the revision petitioner/defendant for recovery of a sum of Rs.9,30,762/-, together with interest at the rate of 18% per annum from 04.10.2010 till 04.12.2011 (date of filing of the plaint) and future interest of Rs.11,26,022/-, at the rate of 18% per annum. Thereafter the suit was contested by the respondent by filing their written statement on 01.10.2012 and ultimately, the suit was decreed. Challenging the said Judgment and Decree, the revision petitioner had filed the First Appeal on the file of the learned XVI Principal Judge, City Civil Court, Chennai. However, there was a delay of 522 days in preferring the appeal.

3 In the affidavit filed in support of the said petition, the revision petitioner would contend that they were not aware of the of the suit being decreed and it was only after they have enquired with their counsel about the status of the suit that they came to know that it had been decreed in favour of the plaintiffs and the learned counsel had not applied for the certified copy of the Judgment and Decree. Thereafter, the revision petitioner had

engaged a new counsel, who had made necessary applications and after obtaining the certified copies, had filed the appeal and in the process, the delay of 522 days had occurred. They therefore, sought for condonation of the delay.

4 The plaintiff resisted the above application, inter alia contending that the revision petitioner had deliberately not taken steps to file the appeal and the reasons given were totally false. The revision petitioner/Company was doing business in real-estate and earning several crores of rupees.

5 Considering the fact that the reason given was not bona fide, he had sought for a dismissal of the said application. The Court below has proceeded to dismiss the application on the ground that affidavit did not contain details as to when the certified copies were applied and when it was obtained and further held that the reason given was not sufficient. Challenging the said order, the revision petitioner is before this Court.

6 Heard counsel on either sides.

7 From a perusal of the order, it is seen that the learned Judge has dismissed the application primarily on the ground

that the counsel in his letter dated 25.05.2017, which was produced by the petitioner, would show that the counsel had in that very letter informed the petitioner that the suit has been decreed and thereafter copy application has been made only on 07.07.2017 and appeal has been preferred on 21.08.2017, the learned Judge has however found the reasons to be inadequate. It is no doubt true, that the affidavit filed in support of the impugned petition does not contain very many details as to when the respondent had actually come into knowledge about the Judgment. Further, considering the notice dated 22.05.2017, it can be presumed that the knowledge had come to them on that date. It has been time again held by the Hon'ble Supreme Court as well as this Court that in matter of delay, certain amount of latitude has to be shown and a pedantic approach cannot be undertaken especially when the reason appear to be bona fide and the party has a substantial stake if the delay is not condoned. The reasons given in the affidavit appears to be bona fide and sufficient.

8 In the result, the Civil Revision Petition is allowed and the order dated 11.04.2018 in CMP.No.950 of 2017 in A.S.SR.No. 45308 of 2017 on the file of the learned Principal City Civil Court at Chennai is set side. However, considering the fact that there is a delay of 522 days, the Civil Revision Petition is being allowed on condition that revision petitioner pays a sum of Rs.5000/-

to the learned counsel for the respondent. The said sum has been paid across the bar. The delay is therefore condoned. The learned Judge is directed to number the first appeal and ensure that the first appeal is disposed of within a period of four months from the date of receipt of copy of this Order.

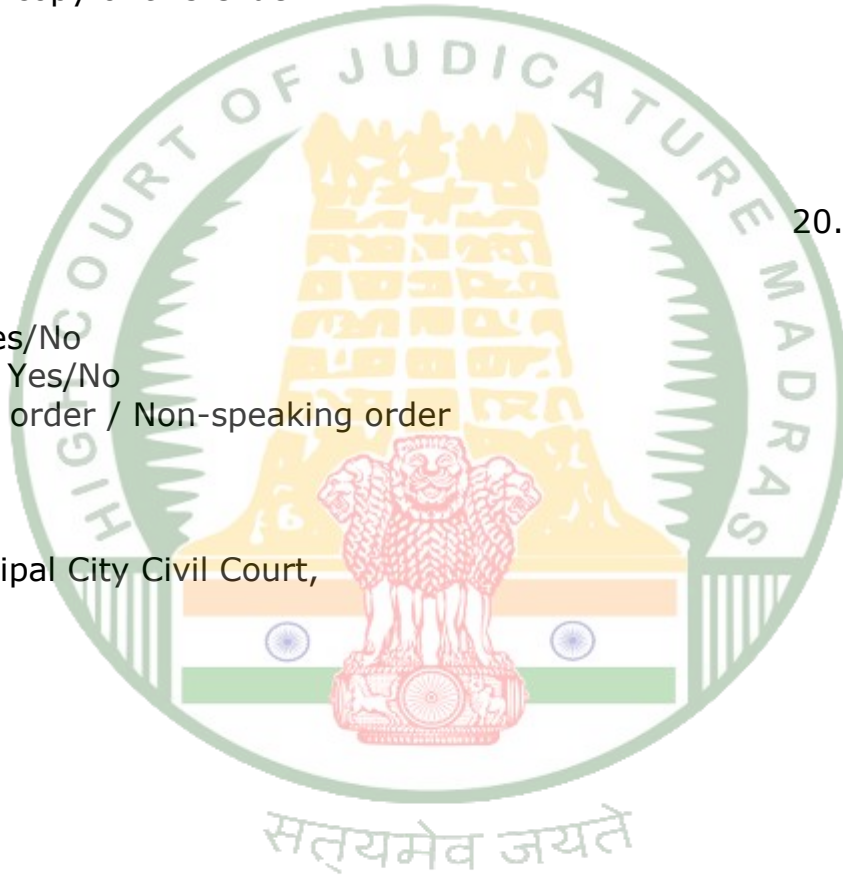
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Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order

To

The Principal City Civil Court,
Chennai.



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P.T.ASHA, J.
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