

C.M.P.No.5466 of 2016 in C.M.A.No.SR18812 of 2016

T.RAJA, J.

This civil miscellaneous petition has been filed to condone the delay of 133 days in preferring the appeal against the judgment and decree passed by the learned First Additional District and Sessions Judge, Tiruppur in I.A.No.482 of 2015 in O.S.No.33 of 2014 dated 14.7.2015.

2. The respondent/plaintiff filed a suit for recovery of a sum of Rs.19,90,360/- together with interest at 21% per annum from the date of suit till the date of realisation with a further direction for payment of costs of the suit. When the matter was posted for appearance of the petitioners/defendants on 25.3.2014, they failed to appear, hence, they were set ex parte. Immediately, an application was filed by the petitioners to set aside the ex parte order. The trial Court allowed the said application on payment of cost of Rs.1,000/- to the respondent/plaintiff on or before 27.10.2014. But the conditional order was not complied with and therefore the application was dismissed on 28.10.2014 and posted the suit on 5.11.2014 for ex parte evidence and ex parte decree was also passed. Therefore, the petitioners filed I.A.No.482 of 2015 to set aside the ex parte decree and for non-compliance of the order directing the petitioners/defendants to pay cost of Rs.1,000/-, the trial Court dismissed the said application. As against that order, the petitioners/defendants have come to this Court.

3. Learned counsel for the petitioners submitted that when C.R.P.(NPD) No.4374 of 2015 was filed challenging the order dated 14.7.2015, this Court, by order dated 18.11.2015 has granted interim stay in M.P.No.1 of 2015 for four weeks. After entering appearance, the respondent also moved an application for vacating the order of stay, raising a plea that the revision is not maintainable and

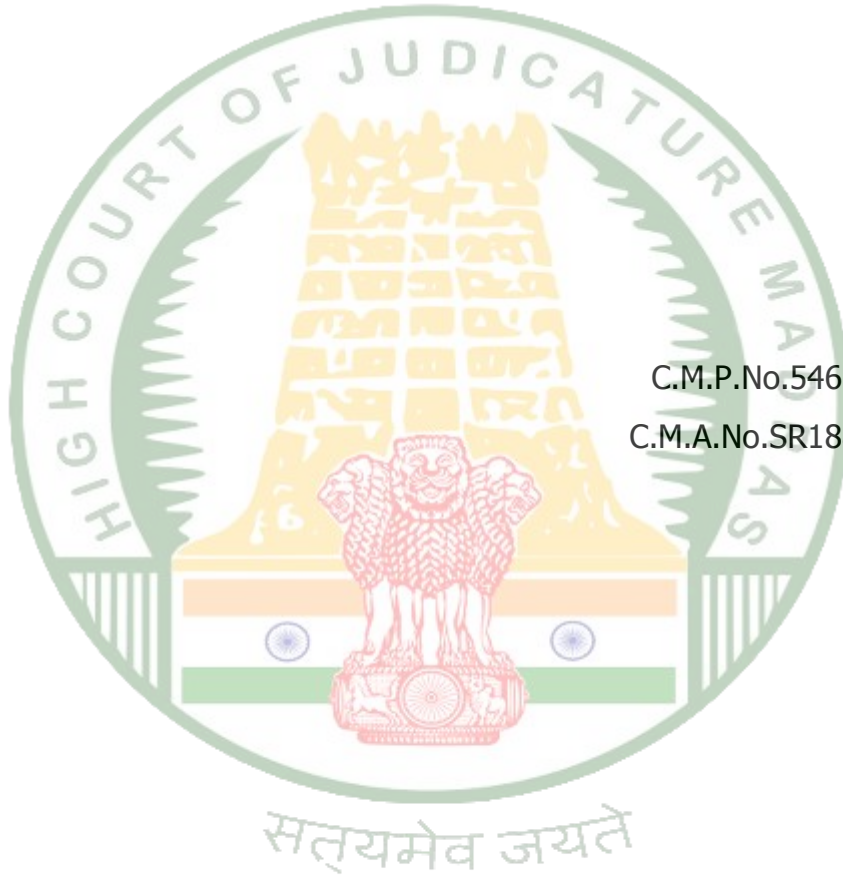
the remedy is only by way of appeal. When the revision came up for hearing on 29.2.2016, the revision petition was withdrawn with liberty to file an appeal. Accordingly, the revision petition was dismissed as withdrawn with liberty to file civil miscellaneous appeal. Only after withdrawing the revision petition, the civil miscellaneous appeal has been filed. In the meanwhile, there has been a delay of 133 days.

4. Although this Court finds that the petitioners have wrongly filed a revision petition without knowing that a civil miscellaneous appeal should have been filed, this Court is not inclined to entertain this petition, because no purpose is going to be served, for the following reasons. Firstly, when the suit was filed for recovery of money of Rs.19,90,360/-, the petitioners/defendants remained absent deliberately to evade the proceedings to be passed against them. Secondly, when the trial Court, while entertaining the application to set aside the ex parte order, passed a conditional order for payment of Rs.1,000/-, that was also not complied with. Therefore, as the petitioners/defendants have come to this Court with unclean hands, this Court is not inclined to show any indulgence. Accordingly, C.M.P.No.5466 of 2016 stands dismissed.

03.07.2019

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