

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.2423 of 2014

D. Nagalakshmi ... Petitioner

v.

1. Balraj

2. Jeevareka

... Respondents

Civil Revision Petition filed under section 115 of the Civil Procedure Code against the order dated 03.04.2014 made in I.A.No.407 of 2012 in O.S.No.146 of 2002 on the file of the Subordinate Judge, Dharmapuri.

For Petitioner : Mr. Lakshminarayanan

For Respondents : Mr. M.R.Sivakumar

ORDER

Challenging the fair and final order passed in I.A.No.407 of 2012 in O.S.No.146 of 2002 on the file of the Subordinate Court, Dharmapuri, the plaintiff has filed the above Civil Revision Petition.

2.1 The plaintiff filed the suit in O.S.No.146 of 2002 claiming damages of Rs.2,00,000/- [Rupees two lakhs only]. The defendants filed their written statement and were contesting the suit. Subsequently, when the suit was posted for trial and for cross examination of P.W.1 on 04.01.2011, the plaintiff failed to appear before the Trial Court and hence, the suit was dismissed for default on 04.01.2011.

2.2 Thereafter, the plaintiff filed an application in I.A.No.407 of 2012 to condone the delay of 468 days in filing the application to restore the suit in O.S.No.146 of 2002, which was dismissed for non prosecution on 04.01.2011.

2.3 In the affidavit filed in support of the application, the plaintiff has stated that she came to know about the dismissal of the suit only when she received the legal notice from the defendants. Further, in the affidavit, the plaintiff has stated that the defendants have sent the legal notice through Sri.Govindharajan, Advocate, Dharmapuri, claiming damages. Further, she has stated that immediately on receiving the notice from the defendants' counsel, she contacted her counsel and her

counsel assured that he had already filed a restoration petition and the same was pending before the Trial court. However, on verification, the plaintiff came to know that the restoration petition was not numbered for more than a year. Thereafter, the plaintiff engaged some other counsel and prosecuted the application in I.A.No.407 of 2012.

2.4 The respondents-defendants filed their counter wherein they have stated that the notice sent to the plaintiff through their Advocate was returned with an endorsement "no such addressee" and therefore, the contention of the plaintiff was not correct.

3. The Trial court, taking into consideration the case of both the parties, dismissed the application finding that the suit was adjourned periodically for the cross examination of P.W.1 and that the averment stated by the plaintiff to the effect that she came to know about the dismissal of the suit only from the notice issued by the defendants claiming damages was not correct for the reason that the notice was returned unserved.

4. on a perusal of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the plaintiff has specifically stated that she came to know about the dismissal of the suit only from the notice issued by the defendants' counsel, Sri.Govindharajan, Advocate, Dharmapuri. Though the defendants have stated that the notice sent to the plaintiff was returned unserved, for the reasons best known to them, they did not produce the returned cover before the Trial Court.

5. The stand taken by the defendants to the effect that the notice sent to the plaintiff was returned unserved cannot be a true version for the reason that even in the affidavit filed by the plaintiff in I.A. No.407 of 2012, she has mentioned the defendants Advocate's name and also the details of the notice sent to her by the defendants. Had the notice sent to her was returned unserved, she could not have given the details of the notice sent to her. This itself would establish that the averment stated in the counter filed by the defendants cannot be a true statement made by them. The Trial Court ought not to have accepted the version of the defendants without producing the returned cover.

6. That apart, when the plaintiff has given sufficient reason for condoning the delay of 468 days, the Trial court should have accepted the same and condoned the delay.

7. Since the petitioner has given sufficient reason for condoning the delay, I am of the view that the fair and decreetal order passed in I.A.No.407 of 2012 are liable to be set aside on payment of costs.

8. Accordingly, the fair and decreetal order passed in I.A.No.407 of 2012 in O.S.No.146 of 2002 on the file of the Subordinate Court, Dharmapuri, are set aside on condition that the petitioner-plaintiff paying a sum of Rs.2,000/- [Rupees two thousand only] as costs to the respondents, within a period of one week from the date of receipt of a copy of this order.

9. It is represented before this Court that the learned counsel appearing for the petitioner-plaintiff has paid the cost amount of Rs.2,000/- to the learned counsel appearing for the respondents today

itself. The learned counsel appearing for the respondents also acknowledged the receipt of a sum of Rs.2,000/-. The submission made by the learned counsel on either side is recorded.

10. In these circumstances, the application in I.A.No.407 of 2012 in O.S.No.146 of 2002 stands allowed. Since the suit is of the year 2002, I direct the Subordinate Judge, Dharmapuri., to dispose of the suit in O.S.No.146 of 2002 , on merits and in accordance with law, within a period of four months, from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is allowed.

13.11.2019

Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

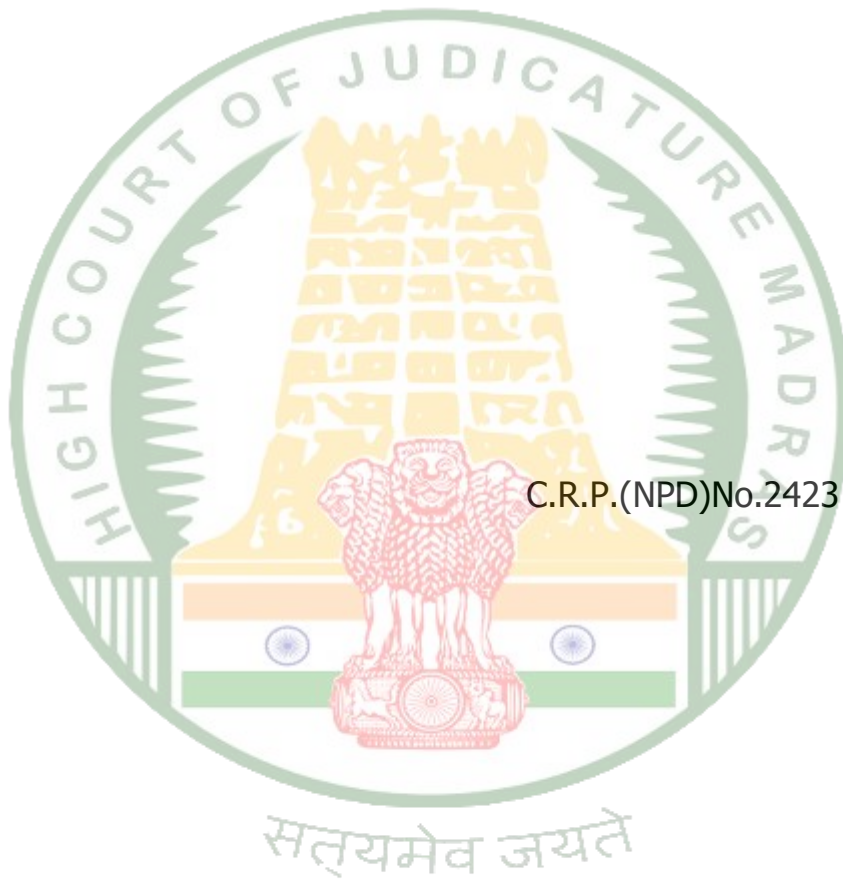
The Subordinate Judge,
Dharmapuri

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C.R.P.(NPD).No.2423 of 2014

M.DURAISWAMY, J.

Rj



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