

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P (NPD).No.2611 of 2014

K.Kandasamy .. Petitioner/Defendant/Appellant

vs

T.P.Arumugam .. Respondent/Plaintiff/Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the Fair and Decreetal order dated 04.04.2014 made in I.A.No.47 of 2012 in A.S.No.18 of 2011 on the file of the Sub Court, Tiruchengode.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.V.S.Kesavan

ORDER

The present civil revision petition is directed against the Fair and Decreetal order dated 04.04.2014 made in I.A.No.47 of 2012 in A.S.No.18 of 2011 on the file of the Sub Court, Tiruchengode.

2. By the impugned order, the petition filed by the petitioner to condone the delay of 18 days in filing the application to restore the appeal

was dismissed. The reason given in the affidavit filed by the petitioner reads as follows:-

“I submit that I am having fair chances to succeed in the above appeal and the same may kindly be disposed off on merits. Now I am filing this petition for restoration of the appeal. I am told that there has been a delay of 18 days in filing the petition for restoration of the appeal and this delay is condonable for the reasons stated supra. Unless the above appeal is restored to I will be put to great loss and hardships.”

3. The petitioner was the defendant in O.S.No.1082 of 2004 before the District Munsif Court at Tiruchengode. The suit was decreed on 15.12.2009. Thereafter, the petitioner had filed an appeal before the Sub-Court, Tiruchengode in A.S.No.18 of 2011. The appeal was however dismissed for default on 21.02.2012 as the counsel appearing for the petitioner had gone out of station for conducting another case in Salem.

4. The Court has dismissed the application filed by the petitioner with the following observations:

“Further on perusal of the records, it could be seen that when the appeal suit was posted for arguments as no further adjournment on 21.02.2012, the learned counsel for the appellant himself reported no instruction for the appellant and that is why the appeal suit was dismissed for non-prosecution. But subsequently it seems that the learned counsel for the petitioner has not at all filed any fresh

vakalath for the appellant. Because when once the counsel for the appellant reported no instruction and it is recorded by the Court, the petitioner should file a fresh vakalath along with this petition so as to maintain this petition. But on perusal of records there is no fresh vakalath filed by this appellant along with this petition. Therefore on this ground also this petition itself, not maintainable for want of valid vakalath.”

5. There is a delay of mere 18 days in filing the application for restoration of the appeal. The application has been dismissed on technicality. It should have been allowed on payment of costs. Meanwhile, during the pendency of the present Civil Revision Petition it appears that the respondent/plaintiff has also died.

6. Considering the over all facts and circumstances of the case, I am of the view that ends of justice will be met if the present Civil Revision Petition is allowed subject to payment of cost.

7. The petitioner shall therefore deposit sum of Rs.3,000/- to the credit of the above appeal before the Sub-Court, Tiruchengode within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appeal shall stand restored.

8. The petitioner shall take steps to implead the legal heirs/legal representatives of the respondent/plaintiff. On the legal representatives of the respondent/plaintiff being impleaded, they shall be allowed to withdraw the amount from the Court. The Sub-Court, Tiruchengode shall thereafter endeavour to dispose the appeal within a period of six months from thereafter on merits.

9. Accordingly the Civil Revision Petition is allowed with the following directions:

i) The impugned order passed I.A.No.47 of 2012 in A.S.No.18 of 2011 on the file of the Sub Court, Tiruchengode is hereby set aside;

ii) The petitioner shall pay a cost of Rs.3,000/- to the credit of the above appeal before the Sub-Court, Tiruchengode. This amount shall be deposited by the petitioner/defendant within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appeal shall stands restored.

iii) The petitioner shall take steps to implead the legal representatives of the respondent/plaintiff.

iv) The Sub-Court,Tiruchengode is also directed to dispose the suit in A.S.No.18 of 2011 within a period of six months from the date of receipt of a copy of this order. No costs.

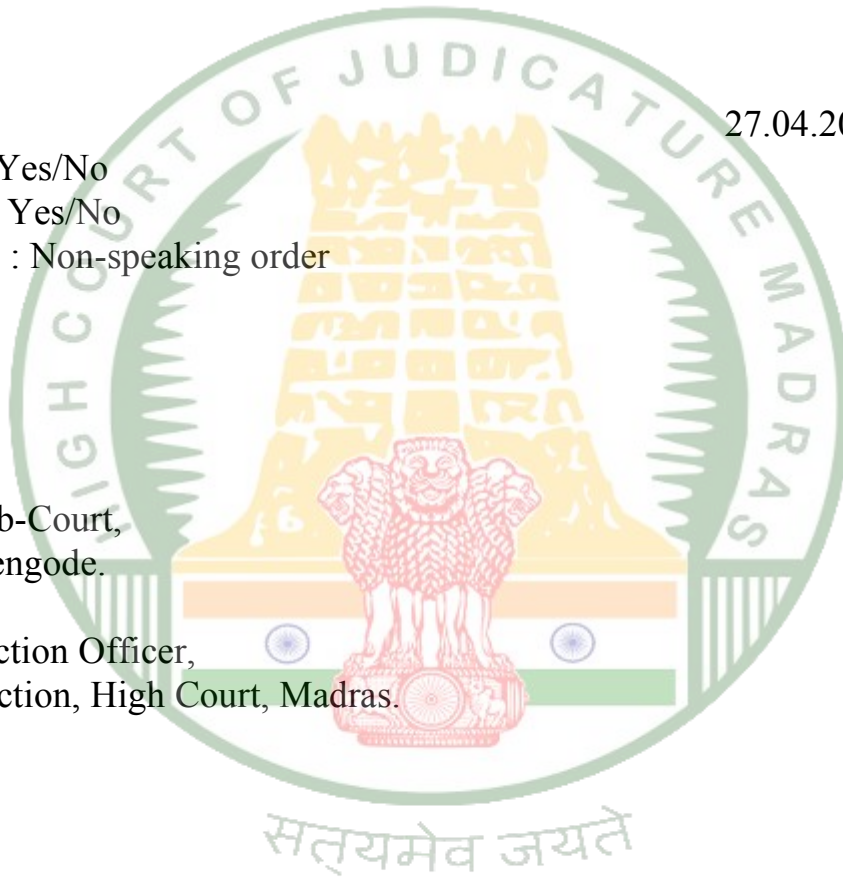
27.04.2019

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

arb/jen

To

- 1.The Sub-Court,
Tiruchengode.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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C.SARAVANAN,J.

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