

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.4837 of 2014 and
M.P.No.1 of 2014

Baby @ Eswari

... Petitioner

v.

1. S.P. Srinivaan

2. M.G. Kandaswamy

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 18.09.2014 made in I.A.No.820 of 2013 in I.A.No.530 of 2011 in O.S.No.177 of 2010 on the file of the Sub Court, Perundurai.

For Petitioner : Mrs. Sripriya
For Mr. V.Raghavachari

For Respondents : Mr. M. Elango - For R1

No Appearance - For R2

ORDER

Challenging the fair and final order passed in I.A.No.820 of 2013 in I.A.No.530 of 2011 in O.S.No.177 of 2010 on the file of the Sub Court, Perundurai, the 1st defendant has filed the above Civil Revision Petition.

2.1 The respondents filed the suit in O.S.No.177 of 2010 for recovery of money. The suit was decreed *ex parte* on 09.11.2010. Thereafter, the 1st defendant filed an application in I.A.No.941 of 2010 to set aside the *ex parte* decree.

2.2 During the pendency of the said application, the 2nd plaintiff, viz., M.G. Kandaswamy, had died on 15.02.2011. In order to bring on record the legal representatives of the deceased 2nd respondent in I.A.No.941 of 2010, the 1st defendant took out an application in I.A.No.530 of 2011 for enquiry. On 10.07.2013, since the 1st defendant's counsel could not appear, the Trial Court, dismissed the application for default.

2.3 On the very next day, the 1st defendant filed an application in I.A.No.820 of 2013 to restore the application in I.A.No.530 of 2011,

which was dismissed for default on 10.07.2013.

2.4 The application filed by the 1st defendant was opposed by the 1st plaintiff stating that the 1st defendant has not given sufficient reason for restoring the application.

3. The Trial Court, taking into consideration the case of both the parties, dismissed the application finding that the 1st defendant has not given sufficient reason.

4. On a perusal of the affidavit filed in support of the application in I.A.No.820 of 2013, it could be seen that in Paragraph No.3, the petitioner has stated that when the application in I.A.No.530 of 2011 was posted for enquiry on 10.07.2013, the application was passed over for enquiry and in the mean time, her counsel went to the District Munsif Court, Perundurai for enquiry in some other suit. At that time, the Trial Court called the matter and dismissed the application for default. On the very next day, the 1st defendant filed an application to restore the application in I.A.No.530 of 2011.

5. The reasoning given by the 1st defendant is acceptable. The Trial Court, ought not to have dismissed the application in I.A.No.820 of 2013. I am satisfied with the reasons stated in the affidavit filed in support of the application in I.A.No.820 of 2013.

6. In these circumstances, the fair and decreetal order passed in I.A.No.820 of 2013 are liable to be set aside. Accordingly, the same are set aside. The application in I.A.No. 820 of 2013 stands allowed. The Sub Judge, Perundurai, is directed to dispose of the application in I.A.No.530 of 2011, within a period of two weeks from the date of receipt of a copy of this order and also dispose of the application in I.A.No.941 of 2010 on merits and in accordance with law, within a period of four weeks thereafter.

With thee observations, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

12.11.2019

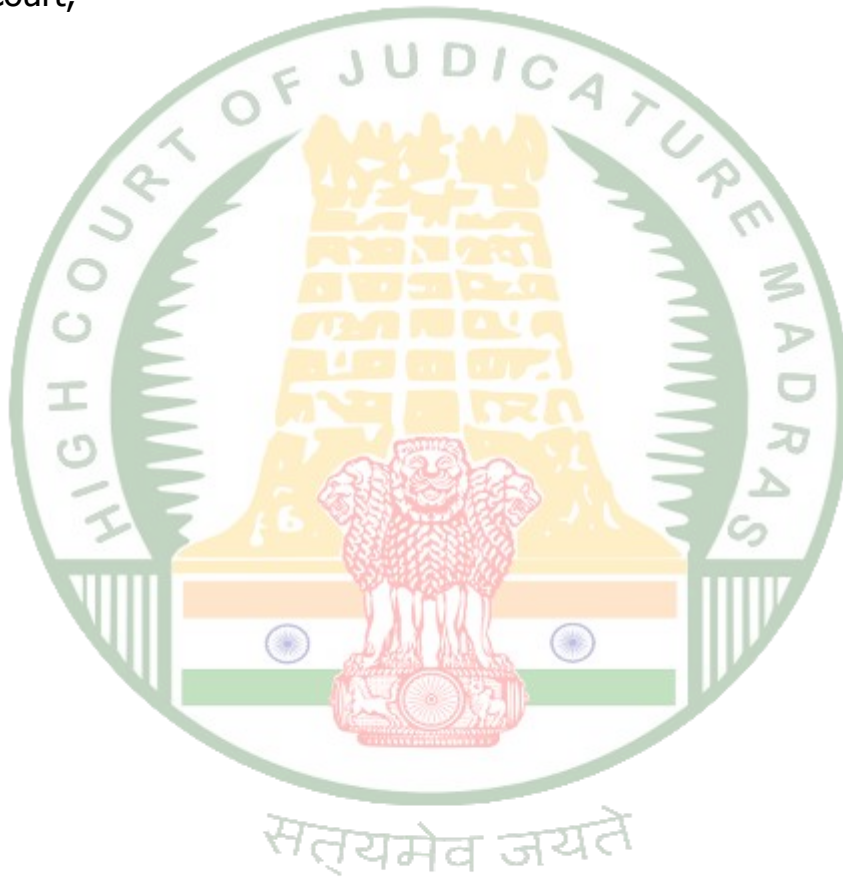
Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

The XIII Assistant Judge,
City Civil Court,
Chennai.



WEB COPY

C.R.P.(PD).No.4837 of 2014

M.DURAISWAMY, J.

Rj



C.R.P.(PD)No.4837 of 2014 and
M.P.No.1 of 2014

WEB COPY

12.11.2019