



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2019

CORAM :

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (MD) No.2041 of 2013

and

M.P. (MD) No.1 of 2013

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1.M.Muthuramalingam

2.Subbulakshmi

... Petitioners/Defendants/Respondents

vs.

Bhuvaneshwari (died)

R.M.Natarajan

... Respondent/Plaintiff/Petitioner

Prayer:- This Petition is filed under Article 227 of the Constitution of India, to number the unnumbered I.A.SR.No.2357 of 2013 in O.S.No.25 of 1997 on the file of the Sub Court, Pattukkottai, Thanjavur District.

For Petitioners : Mr.K.Balasundharam

For Respondent : Mr.D.R.Murugesan

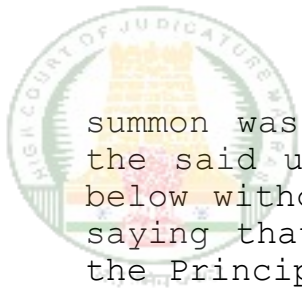
ORDER

The above Civil Revision Petition is filed by the defendants challenging the dismissal of the application in I.A.SR.No.2357 of 2013 filed for condoning the delay of 5730 days in filing the application to set aside the *ex parte* decree dated 13.08.1997, without even numbering the same.

2.This is a rather unfortunate case where the plaintiff has launched a two pronged attack on the defendants by initiating the proceedings under the Negotiable Instruments Act as well as the filing of the suit for recovery of money.

3.Pursuant to the orders passed in the calender case proceedings, it appears that the 1st defendant was arrested between the period 16.07.1998 and 21.07.2011. The suit O.S.No.25 of 1997 appears to have filed in the year 1997 just before the 1st defendant was arrested. The respondent is unable to say if the summon was served on the petitioners.

4.From the records, it is seen that the 1st defendant has come to know about the *ex parte* decree only when he was served with a notice in the execution proceedings in E.P.No.93 of 2007. The



summon was served on him on 03.07.2013. He has immediately filed the said unnumbered application on 18.07.2013. However, the Court below without numbering the said application has dismissed the same saying that the entire case records have already been submitted to the Principal District Court, Thanjavur for safe custody.

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5. In view of the above, the learned Subordinate Judge, Pattukottai, is directed to forthwith procure the documents from the Principal District Court, Thanjavur, and to number the I.A.SR.No.2357 of 2013 in O.S.No.25 of 1997 and proceed in accordance with law.

6. This Civil Revision Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Subordinate Judge,
Pattukottai.

2. The Principal District Judge, Thanjavur

+1 CC to M/s.K.BAALASUNDHARAM, Advocate (SR-96244[F] dated 05/11/2019)

+1 CC to M/s.D.R. MURUGESAN, Advocate (SR-96250[F] dated 06/11/2019

C.R.P. (MD) No.2041 of 2013

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SMA/17/12/19/2P/5C