

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) Nos.1739 & 1740 of 2018
and CMP No.9542 of 2018

D.Sadhasivam

... Petitioner in both CRPs

Vs

N.Ravikumar

... Respondent in both CRPs

Common prayer: The Civil Revision petitions filed under Article 227 of Constitution of India, praying to set aside the order and decretal order dated 07.04.2018 made in I.A.Nos.175 & 176 of 2018 in I.A Nos.132 & 131 of 2017 in O.S.No 48 of 2013 on the file of the Sub Court at Udumalpet.

For Petitioner
in both CRPs

Ms.Surekha for
Mr.N.Senthil Kumar

For Respondent
in both CRPs

: Mr.G.T.Subramanian

COMMON ORDER

These two revisions have been filed against the orders of the appellate Court, dismissing the applications in I.A.Nos.175 & 176 f 2018.

2. I.A.Nos.175 and 176 of 2018 were filed seeking extension of time to comply with the conditional orders passed in I.A.Nos.250 and 251 of 2017. I.A.Nos.250 and 251 of 2017 were in-turn filed for restoration of I.A.Nos.131 and 132 of 2017 which were the applications to reopen the evidence of the plaintiff and to recall PW1 for further cross examination. The suit is one for recovery of money. The plaintiff was examined as PW1 and was also cross examined, subsequently his evidence was closed and the suit was posted for defence evidence. At that juncture, the defendant came up with two applications to reopen the evidence of PW1 and to recall PW1. Those applications were numbered as I.A.Nos.131 and 132 of 2017. It is seen from the records that those two petitions were dismissed on 16.03.2017 for default. It is also seen that on 16.03.2017, the applications were posted for filing of counter by the respondent. However, the petitioner filed two applications in I.A.Nos.250 and 251 of 2017 seeking restoration of

I.A.Nos.131 and 132 of 2017 which were filed for reopening of evidence of plaintiff and to recall PW1. The said I.A.Nos.250 and 251 of 2017 were allowed on condition that the petitioner pays a sum of Rs.1,000/- as cost on or before 07.08.2017. The condition was not complied with. Hence, the applications were dismissed for non-compliance. Claiming that the default occurred due to petitioner's illness, the petitioner came up with I.A.Nos.175 and 176 of 2018 seeking extension of time.

3. The trial Court had dismissed the applications on the ground that the applications have been filed after expiry of the time granted and no acceptable reason has been given for non compliance with the conditional order. Hence these civil revision petitions.

4. I have heard Ms.Surekha, learned counsel appearing for Mr.N.Senthil Kumar, for the petitioner and Mr.G.T.Subramanian, learned counsel appearing for the respondent.

5. No doubt, there has been consistent default on the part of the petitioner. However, considering the fact that the suit is one for recovery of more than Rs.5 lakhs, I am of the considered opinion that an opportunity should be given to the petitioner to cross examine PW1 since the reason assigned for non-compliance with the order is one of illness.

6. The Hon'ble Supreme Court as well as this Court have repeatedly pointing out that the Courts must be liberal in condoning the delay, particularly when a plausible reason is offered by the parties and the parties did not stand to gain monetarily because of the delay. The delay against is not very long. I am, therefore constrained to interfere with the order of the trial Court. The order of the trial Court is set aside. The interlocutory applications in I.A.Nos.250 and 251 of 2017 will stand allowed and I.A.Nos.131 and 132 of 2017 will stand restored and allowed. However, the petitioner shall pay a further sum of Rs.4,000/- (Rupees Four thousand only) as costs to the respondent appearing in this Court on or before **25.01.2021**. On such payment and production of receipt, the trial Court is directed to post the suit for evidence of PW1 on a particular date .

The petitioner / defendant will cross examine PW1 on the said date and the trial Court can accommodate further two hearings for the completion of cross examination.

7. With the above direction, the Civil Revision petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

21.12.2020

Note: Time bound order

vum

Index: Yes/No
Speaking order / Non speaking order

To:

The Sub Court,
Udumalpet.

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R.SUBRAMANIAN, J.

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