

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) Nos.3402 & 3404 of 2018
and CMP Nos.19178 & 19183 of 2018

P.Janarthanan ... Petitioner in both CRPs

Vs

S.Senguttuvan ... Respondent in both CRPs

Common prayer: The Civil Revision petitions filed under Article 227 of Constitution of India, praying to set aside the order passed in I.A.No.234 & 235 of 2018 in O.S.No.98 of 2014 dated 23.08.2018 on the file of the Subordinate Judge , Neyveli.

For Petitioner
in both CRPs :Mr.R.Selvakumar

For Respondent
in both CRPs : No appearance

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COMMON ORDER

These revisions are against the orders of the learned trial Judge allowing an application to recall and reopen the evidence of DW1.

2. A suit for recovery of money was laid by the plaintiff in O.S.No.98 of 2014. It is seen from the records that the said suit was posted for cross examination of DW1 on 14.12.2016, since the counsel for the petitioner was absent, the Court closed the evidence and adjourned the suit for arguments. The counsel for the plaintiff reported no instruction and despite service of notice, the plaintiff was called absent on 03.01.2017, when the suit was posted for hearing. Therefore, the trial Court dismissed the suit for default. The plaintiff came up with an application in I.A.No.328 of 2017 seeking condonation of delay of 138 days in filing an application to restore the suit. That application came to be allowed on condition that the petitioner pays a cost of Rs.2,000/-.

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3. The defendant had not challenged the said order and had accepted the cost. Therefore, the delay stood condoned. Thereafter, the

restoration of the application was numbered as I.A.No.218 of 2018 and the same came to be allowed on 09.07.2018. Upon restoration, the plaintiff came up with these two applications to reopen the evidence of the defendants and to recall DW1 for cross examination.

4. The trial Court accepted the reasons assigned in the affidavit filed in support of the application and concluded that the plaintiff should be given an opportunity to cross examine the witness. On the said conclusion, the learned trial Judge allowed the application on condition that the plaintiff pays a sum of Rs.2,000/- as costs. Aggrieved by this order, the defendant has come up with this revision.

5. I have heard Mr.R.Selvakumar, learned counsel appearing for the petitioner in both Civil Revision petitions.

6. Mr.R.Selvakumar, learned counsel appearing for the petitioner would vehemently contend that the trial Court was not right in accepting the explanation offered in the delay application to restore the suit as the reason

for reopening the evidence of DW1. It is a fundamental principal of law that once the suit that is dismissed for default is restored, it is to proceed from the stage at which it was dismissed for default.

7. Once the reasons for the delay are accepted, automatically the suit will be restored to the original position and t he plaintiff should be allowed an opportunity to cross examine the defence witness. I do not see any error or irregularity in the order of the trial Court which has exercised its judicial discretion in favour of the plaintiff. Therefore, I do not find any merits in the revisions. In the result, both the Civil Revision petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

11.12.2020

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Index: Yes/No
Speaking order / Non speaking order

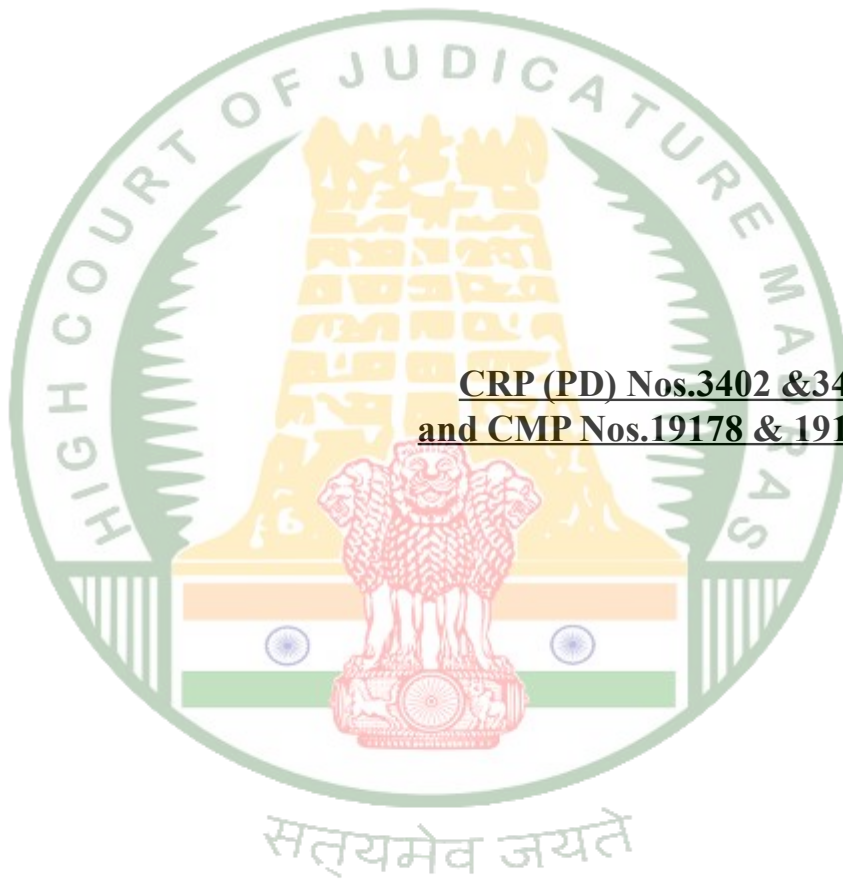
To:

The Sub Ordinate Judge , Neyveli.

4/5

R.SUBRAMANIAN, J.

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