

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP.No. 2655 of 2000

M/s.Uttam Prabat Industries,
by its Partner, Seshmal C.Bafna ... Petitioner
Vs.

P.Subramaniam,
Proprietor,
Sri Devi Products &
United Exporters ... Respondent

PRAYER: The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, praying to set aside the judgement and decretal order dated 15.09.1999 passed by the learned IV Additional City Civil Judge, in charge of VII Additional City Civil Court, Chennai in I.A.No.20183 of 1998 in O.S.No.1567 of 1998.

For Petitioner : M/s.Surana & Surana

For Respondent : No Appearance

O R D E R

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.20183 of 1998 in O.S.No.1567 of 1998 dated 15.09.1999 on the file of the IV Additional City Civil Judge, in charge of VII Additional City Civil Court, Chennai, thereby, dismissing the petition to restore the suit filed by the petitioner herein.

2. The petitioner is the plaintiff. He filed the said suit as against the respondent for recovery of money. Initially, the suit was filed before this Court and he was examined as P.W.1 and at that time, the matter was pending for cross examination of P.W.1. Due to pecuniary jurisdiction, the suit was transferred to the file of IV Additional City Civil Court, Chennai for trial. When the matter was posted for cross examination of P.W.1 on 12.11.1998, he was unable to be present before the trial Court and as such, the suit itself was dismissed for default. Thereafter, the petitioner filed a petition to set aside the order dated 12.11.1998 and to restore the suit.

3. While filing the said I.A, the petitioner stated the date on which he was absent being on 12.11.1998 in the affidavit, and he mentioned the date as 11.12.1998 in the petition. Therefore, the trial Court dismissed the said petition on the ground that the petitioner did not even state the proper date on which he was absent and the suit was dismissed for default.

4. The learned counsel for the petitioner submitted that the suit itself was filed for recovery of money and the plaintiff is very much alive. In fact, at the time of application for attachment before judgment, the defendant deposited some part of the suit claim amount in the suit. Therefore, he has very good case to succeed.

5. Considering the above submission and also the reason for dismissal of the said petition for restoring the suit, the order passed by the trial Court is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the order passed in I.A.No.20183 of 1998 in O.S.No.1567 of 1998 dated 15.09.1999 is set aside. The trial Court is directed to complete the trial within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

The IV Additional City Civil Judge,
in charge of VII Additional City Civil Court, Chennai

+1 cc to Mr.Surana & Surana advocate sr4257

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