

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM

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

CRP.NPD.No.3314 of 2016 and
CMP.No.16905 of 2016

R.Uma Maheswari

..Petitioner

Vs.

G.Padmini

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of Code of Civil Procedure praying to set aside the order and decretal order passed in IA.No.4890 of 2016 dated 12.08.2016 in OS.No.1884 of 2015 on the file of XII Assistant City Civil Court, Chennai.

For Petitioner : Mr.K.Natarajan

For Respondent : Mr.M.Chidambaram

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ORDER

The civil revision petition is directed as against the order and decretal order passed in IA.No.4890 of 2016 dated 12.08.2016 in

OS.No.1884 of 2015 on the file of XII Assistant City Civil Court, Chennai thereby dismissing the petition to condone the delay in filing the set aside the exparte decree petition.

2. The petitioner is the defendant in the suit filed by the respondent herein for recovery of money. After receipt of notice in the main suit, the respondent failed to file leave to defend petition and as such the petitioner was set exparte on 09.06.2015. Immediately, the petitioner filed petition to set aside the exparte decree with the delay of 1 day. Along with condone delay petition he also filed petition to set aside the exparte decree and also petition for leave to defend the suit. The trial court condoned the delay and also set aside the exparte decree. Unfortunately without numbering the leave to defend petition, again the suit was decreed in the absence of the petitioner herein by the judgment and decree dated 04.01.2016. Thereafter the respondent filed execution petition to execute the decree passed in his favour. While pending the execution petition, again the petitioner filed petition to set aside the exparte decree with the delay of 13 days in filing the petition to set aside the exparte decree. The said petition was dismissed. Aggrieved by the same, the present Civil Revision Petition is filed.

3. On perusal of the records, initially the petitioner was set exparte in the main suit by the judgment and decree dated 09.06.2015. Immediately, the petitioner filed petition to set aside the exparte decree with delay of 1 day. In fact he also filed petition for leave to defend along with condone delay petition and also set aside the exparte decree petition. The trial court condoned the delay of 1 day in filing the set aside the exparte decree petition and also set aside the exparte decree. But the trial court failed to number the leave to defend petition and again the petitioner was set exparte and passed judgment and decree. Therefore, the petitioner may be given one opportunity to leave to defend suit.

4. Considering the above, the order passed by the court below is liable to be set aside. Accordingly, this civil revision petition is allowed and the order passed in IA.No.4890 of 2016 dated 12.08.2016 in OS.No.1884 of 2015 on the file of XII Assistant City Civil Court, Chennai is set aside on payment of Rs.1,000/- (Rupees One Thousand only) as cost to the respondent herein. The cost shall be paid by the petitioner within a period of two weeks from the date of receipt of copy of this order. Thereafter, the trial court is directed to number the leave

to defend petition and pass orders on merits in accordance with law.
Consequently, connected miscellaneous petition is closed. No order as to costs.

09.02.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

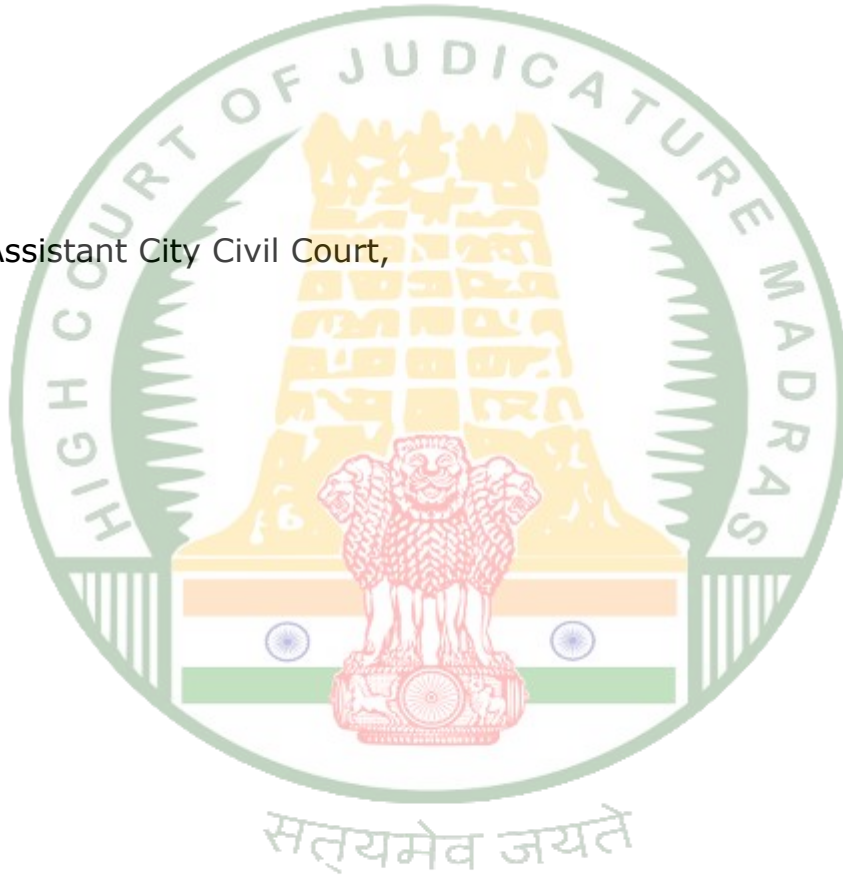
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To

The XII Assistant City Civil Court,
Chennai.



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G.K.ILANTHIRAIYAN,J.

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