

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

O.S.A.No.216 of 2019 Against A.No.4124/18 in C.S.929/16

and

C.M.P.No.19661 of 2019

Mrs.Maheswari Prince Andrew ...Appellant/Defendant

Vs

Mrs.K.Kaveri ...Respondent/Plaintiff

PRAYER : Original Side Appeal filed under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of Letters Patent, praying to allow the Appeal and thereby setting aside the Judgment and Decree passed in Application No.4124 of 2018 in C.S.No.929 of 2016 dated 06.07.2018 on the file of this Court.

Application No.4124 of 218 in C.S.No.929 of 2016

PRAYER: Application praying that this Hon'ble Court be pleased to condone the delay of 304 days in filing the written statement along with counter claim.

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For Appellant : Mr.A.R.Nixon.

For Respondent : Mr.P.Manikannan
for Dr.J.Daniel.

J U D G M E N T

(Judgment of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conference".

2.The Applicant / Defendant is the Appellant herein, who has come before this Court, aggrieved by the Order of dismissal of an Application filed by him to condone the delay of 304 days in filing Written Statement along with Counter Claim.

3.Heard Mr.A.R.Nixon, Learned Counsel for the Appellant and Mr.P.Manikannan, Learned Counsel for the Respondent.

4.It is evident from the records that the Respondent has filed a Suit in C.S.No.929 of 2016 for recovery of a sum of Rs.64,89,600/- from the Appellant being the tenant. Though summons have been served, Written Statement was not filed in time. Hence, there is a delay of 304 days in filing Written Statement. Therefore, the Appellant filed an Application to condone the said delay in filing Written Statement along with Counter Claim. The said Application was dismissed by the Learned Single Judge, against which the present Appeal has been filed.

5.Without going into the merits of the case, this Court is of the opinion that the Appellant should be given an opportunity to contest the Suit, especially, when the Appellant has got Counter Claim against the Respondent. Therefore, this Court directed the Appellant to pay a sum of Rs.10,000/- as cost to the Respondent and the same has been received by the Learned Counsel for the Respondent and in this regard, an endorsement has also been made by the Learned Counsel for the Respondent accepting a sum of Rs.10,000/- as cost.

6.In view of the above, the dismissal order dated 06.07.2018 passed by the Learned Single Judge in Application No.4124 of 2018 in C.S. No. 929 of 2016 is set aside and accordingly, delay of 304 days in filing the Written Statement along with counter claim is condoned. Since the Written Statement and Counter Claim have been accepted and taken on file, the Respondent has to file a Reply Statement to the Counter Claim made by the Appellant, within a period of 45 days from the date of receipt of a copy of this Judgment.

7.It is brought to the notice of this Court that due to increase in pecuniary jurisdiction, the Suit has to be transferred to the file of City Civil Court. Hence, Registry is directed to transfer the Suit in C.S.No.929 of 2016 to the file of City Civil Court within a period of one week from the date of

receipt of a copy of this Judgment. On receipt of the case bundle, the City Civil Court, Chennai is directed to frame issues in the said Suit within a period of one week from the date of filing of Reply Statement to the Counter Claim made by the Appellant and thereafter, to dispose of the Suit within a period of six months from the date of framing of issues.

8. With the above observations and directions, this Original Side Appeal is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

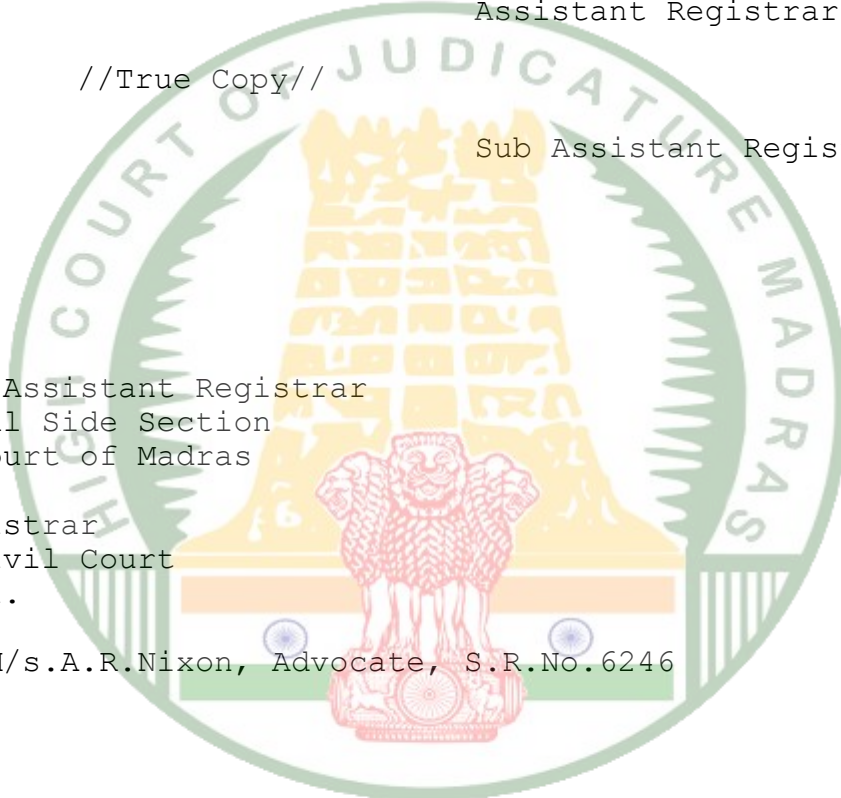
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To

1. The Sub Assistant Registrar
Original Side Section
High Court of Madras

2. The Registrar
City Civil Court
Chennai.

+1 cc to M/s.A.R.Nixon, Advocate, S.R.No.6246



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O.S.A.No.216 of 2019
and

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