

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2021

CORAM

THE HON'BLE Mrs. JUSTICE S.KANNAMMAL

C.R.P.(NPD).No.3937 of 2017

P.Shanmugam

... Petitioner

Vs.

K.Raju

... Respondent

Prayer: The Civil Revision Petition filed under Section 115 of C.P.C., against the order dated 23.09.2016 made in I.A.No.199 of 2015 in O.S.No.21 of 2013 on the file of Subordinate Court, Perundurai.

For Petitioner : Mr.G.Jermiah
For Respondent : Mr.V.S.Kesavan

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed seeking to set aside the Order dated 23.09.2016 passed in I.A.No.199 of 2015 in O.S.No.21 of 2013 on the file of the Subordinate Court, Perundurai.

2. The learned counsel for the petitioner and the respondent present.

3. Brief facts of the case is that the main suit in O.S.No.21 of 2013 has been filed by the respondent herein against the revision petitioner for recovery of money at Rs.6,01,825/- and interest. The suit was decreed exparte due to the non appearance of the petitioner herein. The civil revision petitioner filed I.A.No.199 of 2015 for condoning the delay of 124 days for filing the application to set aside the exparte decree. The respondent herein filed detailed counter, in that application. After perusing the petition and counter statement the learned Subordinate Judge dismissed the petition.

4. According to the petitioner herein, the reason for non appearance on the day of trial is that he is a crippled person not able to walk and stand as like other person and further he met with an accident and sustained grievous injury. The Trial Court carefully observed that no documents has been filed by the petitioner herein to prove that the petitioner sustained grievous injury in the accident. It is also proved by the respondent that the petitioner herein has appeared before the criminal Court on 12.09.2014, 26.09.2014, 31.10.2014, 17.12.2014 as per the diary extract of Criminal Court Sankagiri which has been marked as Ex.R1. In view of the falls and unacceptable reason, the trial Court correctly dismissed the petition. However, based on the submission made by the learned counsel for the

petitioner before this Court, in order to give an opportunity to the petitioner, this Court is inclined to direct the trial Court to number the petition filed for setting aside the exparte decree, so that the matter shall be proceeded further.

5. Accordingly, the order dated 23.09.2016 passed in I.A.No.199 of 2015 in O.S.No.21 of 2013, is set aside. Though the learned counsel for the respondent raised serious objections it is submitted that at least the petitioner has to be directed to deposit the suit cost before the trial Court. The learned counsel for the petitioner also aggrieved for the same. Hence, considering the facts and circumstances, this civil revision petition stands allowed on condition that the petitioner shall deposit the suit cost of Rs.45,000/- before the trial Court. At the request of the learned counsel for the petitioner, two weeks time is granted for depositing the above said suit cost.

6. Submission made by the respective counsel that the petition to set aside the exparte decree is to be numbered and it is to be allowed, so that they can proceed with the case. Hence in view of the submission made by the learned counsel for parties the trial Court is directed to number the petition filed for setting aside the exparte decree, allow the same and proceed with the trial. The

S.KANNAMMAL.J.

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Trial Court is also directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order.

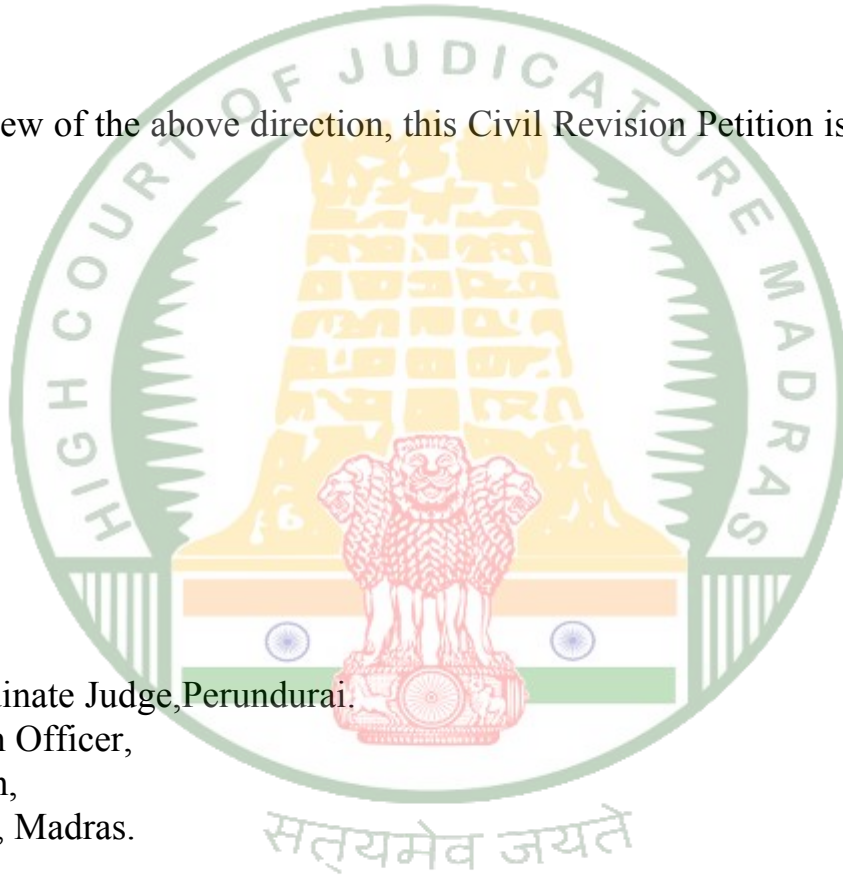
7. In view of the above direction, this Civil Revision Petition is disposed of accordingly.

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To

- 1.The Subordinate Judge,Perundurai.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.

27.08.2021
(½)



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