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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM:

Mr. JUSTICE N.SESHASAYEE

CRP(PD)No.1259 of 2022
and C.M.P.No.6761 of 2022

Jayanthy
W/o. Gopalakrishnan ... Petitioner

Vs.

Jayalakshmi
W/o.Later Palani, ... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside fair and decretal order passed by the Principal Subordinate Court Tiruvannamalai in I.A.No.376 of 2021 dated 30.09.2021 in O.S.No.322 of 2016.

For Petitioner : Mr.S.Michael

O R D E R

The plaintiff has laid a suit for money based on a promissory note. This was returned by the trial Court for paying deficit court fee and it granted 30 days for curing the defect. The plaintiff cured the defect, paid the deficit stamp and

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re-presented it. The point, the Revision Petitioner/Defendant now makes is that, the promissory note in question is dated 02.10.2013, that the limitation for instituting a Suit on the same expired on 02.10.2016, that even though the plaintiff had presented the plaint before the expiry of the limitation period, he re-presented it some two days after the expiry of the limitation period, viz. 04.10.2016. In fitness of things, the trial Court ought to have issued notice to the defendant before taking the plaint onto its record, he, therefore filed I.A.No.376 of 2021 for rejection of plaint on ground that the Suit is barred by limitation.

2.The trial Court dismissed it and it had taken a view that inasmuch as the plaintiff has re-presented it within the time stipulated by the Court, for re-presenting it, it cannot be said that the suit is barred by limitation.

3.Heard the learned counsel for the revision petitioner.

4.Limitation is essentially a mixed question of law and fact and therefore, it is only appropriate that the matter goes for trial. So far the present contention taken by the revision petitioner in I.A.No.376 of 2021 is concerned, it again

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projects a case of limitation, and it is only appropriate that the defendant takes up the issue that he has now raised in his written statement. The trial Court may also frame necessary issue and decide it.

5.The Civil Revision Petition is accordingly disposed of at the admission stage itself. The learned trial Judge is required not to be influenced by his line of reasoning in I.A.No.376 of 2021 while he considers the issue of limitation as and when is required, to decide the same in the course of his final adjudication of the Suit. Consequently, the connected C.M.P.No.6761 of 2022 is closed. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking / Non speaking order

kas/dk

To

The Principal Subordinate Court,
Tiruvannamalai.

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N.SESHASAYEE, J.
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