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Civil Miscellaneous Appeal No.1472 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1472 of 2024
and CMP No.12849 of 2024

G.Kamatchi

... Appellant

Vs.

E.A.Liakat Ali

... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, challenging the fair and decreetal order dated 25.01.2023 passed in I.A.No.2 of 2022 in O.S.No.5582 of 2017 on the file of XXII Additional City Civil Court, Allikulam, Chennai -03.

For Appellant : Mr.K.S.Harish

For Respondents : Mr.E.Udayachander

JUDGMENT

This appeal was filed only against the fair and decreetal order dated 25.01.2023 passed in I.A.No.2 of 2022 in O.S.No.5582 of 2017 on the file of XXII Additional City Civil Court, Allikulam, Chennai



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2. When the matter was taken up for hearing on 02.07.2024, this Court passed the following order:-

The respondent was represented through a counsel at the SR stage since the appeal was filed with a delay of 102 days. The delay was condoned by an order dated 04.06.2024 and the matter was posted for admission today. There was no representation on the side of the respondent.

2. It is seen from records that the respondent had filed a suit for recovery of money against the appellant on the ground that he entered into an agreement of sale with the appellant and paid an advance amount and ultimately, the agreement did not go through and hence, the respondent sought for refund of the advance amount. Since the amount was not repaid back, the suit came to be filed. After the summon was served on the appellant in the suit, the appellant initially filed I.A.No.38 of 2018 for rejection of



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plaint on the ground that the suit is barred by law of limitation. This application was dismissed for default. The appellant, therefore, filed I.A.No.2018 of 2018 to restore I.A.No.38 of 2018 and the said application was also dismissed for default. Thereafter, the appellant filed I.A.No.1 of 2019 to restore the application filed to restore the application filed for rejection of plaint and curiously, this application was also dismissed for default. Since the appellant did not file the written statement, she was set ex parte on 12.02.2019. The appellant filed I.A.No.2 of 2019 to set aside the ex parte order. This application was allowed by the Court below by imposing a condition that the appellant must pay cost of Rs.2,000/- to the respondent on or before 22.11.2019 failing which the petition will stand automatically dismissed. The matter was listed on 25.11.2019 and there was no representation for the appellant for the entire day and therefore, the trial Court dismissed I.A.No.2 of 2019 since the cost was not paid. The indefatigable attitude of the appellant continued even



thereafter when the appellant filed I.A.No.1 of 2020 to restore I.A.No.2 of 2019. This application was also dismissed by an order dated 02.08.2022. Thereafter, the trial Court passed an ex parte decree on 25.08.2022. The appellant filed I.A.No.2 of 2022 under Order IX Rule 13 of the Code of Civil Procedure to set aside the ex parte decree. This application came to be dismissed by the Court below by an order dated 25.01.2023 and the same has been challenged in this appeal.

3. This Court does not find any merit in this case since the appellant has intentionally dragged on the proceedings from the year 2017 and every time, left the petitions dismissed for default. Therefore, to ensure that the respondent at least sees the colour of the coin, this Court directs the appellant to deposit 50% of the decree amount on or before 30.07.2024. If the appellant shows some bonafides, this Court may consider giving an opportunity to the appellant to contest the suit on merits. It is also made clear that no further time will be granted to deposit the



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amount and if the appellant fails to deposit 50% of the decree amount within the time stipulated by this Court, this Court will proceed to pass final orders in the appeal.

Post this appeal under the caption 'for orders' on 31.07.2024.

3. Heard Mr.K.S.Harish, learned counsel for the appellant and Mr.E.Udayachander, learned counsel for respondent.

4. The learned counsel for appellant submitted that the appellant was not in position to deposit 50% of the decree amount. Hence, the learned counsel made his submissions on merits.

5. The learned counsel for respondent submitted that there are absolutely no merits in this appeal and that the same is liable to be dismissed by this Court.



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6. In the considered view of this Court, the attitude of the appellant has already been elaborately discussed in the earlier order passed on 02.07.2024. Even on that day, this Court was inclined to dismiss the appeal. However, to provide one opportunity to the appellant, this Court directed the appellant to deposit 50% of the decree amount. The appellant has not deposited this amount. In view of the same, this Court does not find any ground to interfere with the order passed by the Tribunal and there are absolutely no merits in this appeal and accordingly, the same is hereby dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

31.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To, XXII Additional City Civil Court, Allikulam, Chennai -03.



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