



CMP(MD). No.10326 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Thursday, the Fifteenth day of February Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice MUMMINENI SUDHEER KUMAR

CMP(MD). No.10326 of 2022

in

CRP(MD).487 of 2020

Navakodi Ponsekar

... Petitioner/Defendant

.. Vs ..

Ramanathan

... Respondent/Plaintiff

Prayer :-

Civil Miscellaneous petition filed U/s.151 of Civil Procedure Code to direct the Learned 1st Additional District Court, Madurai in I.A.No. 179/2018 in O.S.No. 194/2016 dated 07-10-2020 deposited amount of Rs.4,25,000/- to be released in favour of the petitioner.

Prayer in CRP(MD).487 of 2020 :

Civil Revision Petition is filed under Section 115 of the Code of the Civil Procedure, to set aside the fair and decreetal order dated 16.11.2018 passed in I.A.No.179 of 2018 in O.S.No.194 of 2016 on the file of the Ist Additional District Court, Madurai.

ORDER:- This Civil Miscellaneous petition is coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon



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hearing the arguments of Mr.C.Susikumar, Advocate for the Petitioner and none having appeared for the Respondent either in person or through Counsel, this Court made the following order:

The notice sent to the respondent herein was returned with the postal endorsement 'refused'. Hence, the service of the notice on the respondent is treated as completed. No representation for the respondent.

2. This application has been filed to direct the learned trial Court to release an amount of Rs.4,25,000/- deposited in terms of the order passed in I.A.No.179 of 2018 in O.S.No.194 of 2016 as confirmed by this Court in C.R.P.(MD)No.487 of 2020, dated 18.03.2020.

3. O.S.No.194 of 2016 was filed by the respondent herein for recovery of amount of Rs.17,00,000/-. The said suit was initially decreed ex parte and thereafter, the petitioner herein filed I.A.No.179 of 2018 to condone the delay of 297 days in filing the petition to set aside the ex parte decree. The said application was allowed by the learned trial Court by order dated 16.11.2018, subject to condition of petitioner's depositing 25% of the decretal amount. Aggrieved by the said order and decree, the petitioner approached this Court by filing this Civil Revision Petition in C.R.P.(MD)No.487 of 2020. The said Civil Revision Petition also disposed of by this Court, confirming the said condition of depositing 25% of the decretal



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amount on or before 09.04.2020.

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4. It is the contention of the learned counsel appearing for the petitioner that the petitioner herein has deposited the said amount to the tune of Rs.4,25,000/- on 07.10.2020 by duly seeking extension of time from this Court for depositing the said amount and thereafter, the suit was dismissed for non-prosecution by an order and decree dated 18.04.2022 and thereafter, the respondent/plaintiff herein has not taken any steps for restoring the said suit for prosecuting the same.

5. As already noted above, the notice sent to the respondent was also returned with the postal endorsement 'refused'. In the circumstances, it appears that the respondent herein is not interested to prosecute the said suit. The said amount of Rs.4,25,000/- was deposited by the petitioner in terms of the order passed by the trial Court in I.A.No.179 of 2018 and confirmed by this Court in C.R.P.(MD)No.487 of 2020. As the suit itself was dismissed for non-prosecution, the amount that was deposited by the petitioner is necessarily bound to be returned to the petitioner herein. In all fairness, the learned trial Court while dismissing the suit, ought to have passed appropriate orders for return of the said amount. Unfortunately, no such order was passed.

6. In the absence of any petition to restore the suit, which was dismissed for default, as early as on 18.04.2022, the question of retaining the said amount of



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Rs.4,25,000/- with the trial Court is unnecessary and unwarranted.

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7. In the circumstances, this application is disposed of permitting the petitioner to file an appropriate application for withdrawing of the amount of Rs.4,25,000/- with accrued interest and in case, if any such application is filed, the same shall be refunded to the petitioner if no application is pending for restoration of the suit.

Sd/-

Assistant Registrar (CO)

// True Copy //

/03/2024

Sub Assistant Registrar
(CS - I / II / III/ IV)

To

The I Additional District Judge,
Madurai.

ORDER DATED : 15/02/2024

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ORDER
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in

CRP(MD).487 of 2020

Giving direction and etc.
as stated within.

DL/(29.02.2024)/ 4P/2C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.

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