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C.M.A.No.3159 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.01.2025**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3159 of 2024

and

C.M.P.No.26110 of 2024

K.Ravikumar

... Appellant

Vs.

V.R.Subramaniyan

... Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decretal order dated 24.07.2024 made in unnumbered I.A.No. of 2023 in O.S.No.99 of 2015 on the file of Additional Distirct Judge, Chengalpattu.

For Appellant : Ms.Ba.Nalini
for M/s.K.V.Babu

For Respondent : Mr.K.Govi Ganesan



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JUDGEMENT

Aggrieved by the fair and decretal order passed by the learned Additional District Judge, Chengalpattu in I.A.No. of 2023 in O.S.No.99 of 2015, dated 24.07.2024, the appellant has preferred the present appeal.

2. The case of the appellant is that, the respondent herein filed a suit in O.S.No.99 of 2015 on the file of the learned Additional District Judge, Chengalpattu against him for recovery of a sum of Rs.12,11,850/- with subsequent interest of 18% p.a. based on an alleged suit promissory note. Subsequently, due to his ill-health, he was unable to appear before the Trial Court. Pending suit, he was called absent and set *ex-parte* and thereafter, an *ex-parte* decree came to be passed on 12.01.2023. Therefore, he filed an Interlocutory Application in I.A.No. of 2023 (unnumbered) in O.S.No.99 of 2015 u/s 5 of Limitation Act and Section 151 of CPC to condone the delay in filing application to set aside the *ex-parte* decree dated 12.01.2023 under Order 9 Rule 13 CPC and the said applications were dismissed by an order



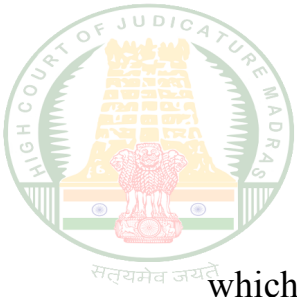
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dated 24.07.2024. Challenging the same, the present appeal has been filed.

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3. Learned counsel appearing for the appellant submitted that though the appellant had filed a written statement, however, for the bonafide reason, he failed to appear before the Trial Court, thereby the *ex-parte* decree was passed in favour of the respondent. In order to set aside the same, the appellant filed petition to condone the delay along with set aside petition, however, the said petitions were dismissed, which is a clear violation of principles of natural justice and the same is liable to be set aside. Accordingly, he prays that this Court may set aside the order and remand the matter to the Trial Court for fresh adjudication.

4. Learned counsel appearing for the respondent did not dispute the facts submitted by the learned counsel appearing for the appellant and submitted that he has no serious objection for remitting the matter to the Trial Court for fresh adjudication. However, he submitted that, this Court may issue a direction to the appellant to deposit a sum of Rs.6,10,000/-



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which was admitted by him in his written statement dated 06.10.2016 and also issue a direction to the Trial Court to conclude the trial within a reasonable time that may be fixed by this Court.

5. It is an admitted fact that, in the written statement filed by the appellant dated 06.10.2016, he admitted that a sum of Rs.6,10,000/- is due to the respondent. In view of the above, the appellant is directed to deposit a sum of Rs.6,10,000/- before the Trial Court in an interest yielding deposit within a period of eight (8) weeks from the date of receipt of a copy of this judgment.

6. In view of the submissions made by the learned counsel for the parties, this Court, without going into the merits of the case, set asides the impugned order passed by the Additional District Judge, Chengalpattu in I.A.No. of 2023 in O.S.No.99 of 2015 dated 24.07.2024. Upon the deposit being made by the appellant, the Trial Court is directed to restore the suit in O.S.No.99 of 2015 and decide the case on merits and in accordance with



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law, within a period of six (6) months thereafter, after providing opportunities to all the parties.

7. With the above direction, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.01.2025

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No

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To

The Additional District Judge, Chengalpattu.



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M.DHANDAPANI,J.,

sp

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