



C.R.P(MD)No.2199 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.2199 of 2018

1.K.Marisamy
2.K.Balasubramani

... Petitioners/Petitioners/
1st & 2nd Defendants

-VS-

1.C.Paulsamy Thevar
2.P.Pasumpon

... Respondents/Respondents/
Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.291 of 2013 in O.S.No.398 of 2009 on the file of the Additional District Munsif Court, Dindigul, dated 13.07.2018 and allow the civil revision petition.

For Petitioners : Mr.N.Marivel
For Respondents: Mr.R.Gowrishankar



C.R.P(MD)No.2199 of 2018

WEB COPY

ORDER

The petitioners are the defendants before the trial Court in O.S.No.398 of 2009 on the file of the Additional District Munsif Court, Dindigul. The suit was filed by the respondents for permanent injunction. In the said suit, the petitioners had filed a petition in I.A.No.324 of 2009 under Order VII Rule 11 Rule 7 of C.P.C., to reject the plaint. The said application was dismissed on 31.10.2011, as the petitioners failed to appear before the trial Court.

2.After the dismissal of the said I.A.No.324 of 2009 on 31.10.2011, thereafter the case was listed on 03.10.2012 after a period of 11 months. However, the petitioners failed to appear before the trial Court.

3.It is the case of the petitioners that the petitioners' father, who was suffering from cancer, was undergoing treatment at Meenakshi Medical Mission, Madurai and therefore, the petitioners were unable to participate in the proceedings before the Trial Court. It is further submitted that the petitioners were set ex-parte on 09.10.2012 and thereafter, ex-parte decree came to be passed on 07.11.2012. It is submitted that the petitioners have explained the delay by giving reasons and despite the same, the trial Court has dismissed the application stating



C.R.P(MD)No.2199 of 2018

WEB COPY

that the petitioners had not examined the Doctor, who was issued the medical certificate, when the petitioners have enclosed the copy of the death certificate of their father. It is further submitted that the dismissal of I.A with condoning the delay of 73 days the impugned order is erroneous and therefore, liable to be interfered with.

4.That apart, it is submitted that the petitioners have also filed a suit before the Principal District Munsif Court, in O.S.No.413 of 2015 against the respondents herein and two others for declaration and injunction and the said suit was dismissed on 28.07.2022. It is submitted that the petitioners have also filed an appeal before the Principal Sub-Court, Dindigul, against the judgment and decree passed in O.S.No.413 of 2015 on 28.07.2022.

5.Per contra, the learned counsel appearing for the respondents would submit that the petitioners have not explained the delay properly and therefore, the trial Court has come to a correct conclusion, while dismissing the application in I.A.No.291 of 2013.



C.R.P(MD)No.2199 of 2018

WEB COPY

6.The learned counsel appearing for the respondents/plaintiffs would rely upon paragraph No. 7 of the impugned order, which is extracted hereunder:-

“7.ம.சா.1 ஆக விசாரிக்கப்பட்டுள்ள மாரிச்சாமி தனது சாட்சியத்தில் இந்த வழக்குரையை தள்ளுபடி செய்யக் கோரி இ.ம.என். 324 / 2009 தாக்கல் செய்யப்பட்டிருந்தாலும் அம்மனுவின் விசாரணை முடிவுற்ற பின்னரே அசல் வழக்கு விசாரணைக்கு எடுத்துக்கொள்ளப்படும் என தனது வழக்கறிஞர் கூறியதால் தொழில் தொடர்பாக வெளி மாவட்டங்களுக்குச் சென்றதாலும் அந்த சமயத்தில் தனது அண்ணன் 1ம் மனுதாரர் தனது தந்தைக்கு சிகிச்சை மேற்கொள்ளவதற்காக மதுரை சென்று வந்ததாலும் மேற்கண்ட காரணங்களாலேயே இந்நீதிமன்றத்தில் ஆஜராகவில்லை என்றும் சாட்சியம் அளித்துள்ளார். மேற்கண்ட ம.சா.1 – ஐ எதிர்மனுதாரர்கள் தரப்பில் குறுக்கு விசாரணை செய்தபோது அவர் இந்த வழக்கைத் தவிர எதிர்மனுதாரர்கள் மற்றும் கோட்டாட்சியர் மீது மாண்புமிகு உயர்நீதிமன்றத்தில் பல நீதிப்பேராணை மனுக்களை தாக்கல் செய்ததையும் அதைத் தான் தொடர்ந்து நடத்தி வருவதை ஒப்புக் கொண்டும் சாட்சியம் அளித்துள்ளார். இவ்வளவு நாட்கள் தாமதமாக இம்மனு தாக்கல் செய்த விபரம் தனக்கு தன்னுடைய வழக்கறிஞர் சொல்லித் தெரியும் என்றும் அது 90 நாட்கள் என்றும் அளித்துள்ளார்.”

7.I have considered the arguments advanced by the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.



C.R.P(MD)No.2199 of 2018

WEB COPY

8. In my view, the trial Court ought to have noted that the petitioners herein have filed a suit in O.S.No.413 of 2015 for declaration and permanent injunction against the respondents herein and two others. Therefore, while dismissing the application for condoning the delay, the trial Court should have taken note of the said fact. That apart, the petitioners have given sufficient reasons for not appearing before the trial Court, on 09.10.2012, when they were set ex-parte and thereafter, when an ex-parte decree was passed on 07.11.2012, the trial Court should have given a fair chance to defend themselves in the suit. Therefore, this Court is inclined to interfere with the impugned fair and decretal order passed by the Trial Court in I.A.No.291 of 2013 dated 13.07.2018. Accordingly, I.A.No.291 of 2013 stands allowed and consequently, connected application to set aside the ex-parte decree dated 07.11.2012 also directed to be allowed. The trial Court is directed to take the written statement filed by the petitioners on record, frame the issues and pass final judgment and decree, within a period of twelve(12) months from the date of receipt of a copy of this order. It is made clear that the trial Court shall pass judgment and decree uninfluenced by the judgment and decree passed in O.S.No.413 of 2015, which has been dismissed in respect of which now appeal is pending before the Sub-Court, Dindigul.



C.R.P(MD)No.2199 of 2018

WEB COPY

9. With the above observations, the Civil Revision petition is allowed on subject to condition that the petitioners pay a sum of Rs.7,500/- (Rupees Seven Thousand Five Hundred only) to the respondents/plaintiffs within a period of two weeks from the date of receipt of a copy of this order, failing which, the Civil Revision Petition shall automatically stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

21.03.2023

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
To:

1. The Additional District Munsif Court,
Dindigul.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(MD)No.2199 of 2018

C.SARAVANAN, J.

Ns

Order made in

C.R.P(MD)No.2199 of 2018

Dated:

21.03.2023



WEB COPY



C.R.P(MD)No.2199 of 2018