

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD) Nos.4208 of 2014 and
1082 of 2015 and
M.P.Nos.1 of 2014 in CRP No.4208 of 2014
and M.P.No.1 of 2015 in CRP No.1082 of 2015

Ravi Petitioner in CRP No.4208 of 2014

Nisani Petitioner in CRP No.1082 of 2015

vs

1. Nisani
2. Saravanan
3. Rajeswari
4. Abirami Respondents in CRP No.4208 of 2014

1.R. Ravi
2.N. Ponmudi Respondents in CRP No.1082 of 2015

Civil Revision Petition No.4208 of 2014 filed under Section 227 of the Constitution of India against the fair and decreetal order dated 12.09.2014 passed by the learned III Additional District Judge, Puducherry in I.A.No.106 of 2013 in O.S.No.111 of 2011.

Civil Revision Petition No.1082 of 2015 filed under Section 227 of the Constitution of India to set aside the order made in I.A.No.523 of 2014 in O.S.No.14 of 2012 dated 4.12.2014 on the file of III Additional District Judge at Puducherry.

For Petitioner in : Mr.V. Manohar
CRP No.4208/2014
& R.1 in CRP No.1082
of 2015

For Petitioner in : Mr.S. Senthilnathan
CRP No.1082/2015
& R.1 in CRP No.4208/2014

For R.2 and R.3 in CRP No.
4208 of 2014 : M/s Sai Bharath Ilan

For R.2 in CRP No.1082
of 2015 : Service Awaited

COMMON ORDER

The learned counsel appearing on either side submitted that since the issues involved in both the Civil Revision Petitions are common, both the Civil Revision Petitions can be disposed of by the Common Order.

2. Civil Revision Petition in C.R.P.No.4208 of 2014 has been filed by the fourth defendant, challenging the order passed by the III Additional District Judge, Puducherry, in I.A.No.106 of 2013 in O.S.No.111 of 2011.

3. Civil Revision Petition in C.R.P.No.1082 of 2015 has been filed by the first defendant, challenging the fair and decreetal order passed in I.A.No.523 of 2014 in O.S.No.14 of 2012 on the file of III Additional District Court at Puducherry.

4. The plaintiff filed a Suit in O.S.No.111 of 2011 for declaration and injunction. Since the fourth defendant failed to file his written statement before the trial Court, he was set ex parte and an ex parte order was passed on 8.02.2013. Thereafter, the fourth defendant filed a petition to set aside the ex parte order. The application was contested by the respondents stating that the petitioner has not given sufficient cause for setting aside the exparte order.

5. The trial Court, after taking into consideration the case of the respondents, dismissed the application, finding that the fourth defendant has not given sufficient cause for setting aside the ex parte order.

6. On a perusal of the affidavit, filed in support of the petition, it could be seen that the fourth defendant has stated that since an application in I.A.No.70 of 2012, filed under Order VII Rule 11 of Civil Procedure Code, is pending, he was under the *bona fide* impression that he need not file written statement within the time stipulated by the trial Court. Since I see justification in the reasoning given by the petitioner, in the affidavit filed in

support of the petition. The trial Court, in the interest of justice and in order to give one more opportunity to the fourth defendant, could have allowed the application.

7. In these circumstances, the fair and decreetal order passed in in I.A.No.106 of 2013 in O.S.No.111 of 2011 are liable to be set aside.

8. In O.S.No.14 of 2012, the first defendant filed an application to set aside the ex parte order. Since she/first defendant called absent, an ex parte order was passed on 7.8.2012. Since the second defendant has not filed his written statement he was also set ex parte on 5.2.2013 and the petition filed by the second defendant to set aside the ex parte order was dismissed on 12.9.2013. The trial Court dismissed the application stating that the second defendant cannot step into the shoes of the first defendant and file an application to set aside the ex parte order.

9. It is pertinent to note that the first defendant has given Power of Attorney dated 7.3.2012 in favour of the second defendant and pursuant to which, the first defendant has also filed an application in I.A.No.175 of 2013 to permit the second defendant to prosecute the matter on her behalf. The trial Court allowed the application on 17.9.2014 and permitted the second defendant to prosecute the matter on behalf of the first defendant.

10. That being the case, the trial Court dismissed the application to set aside the ex parte order finding that the second defendant is stepping into the shoes of the first defendant and that there is a delay of 2 ½ years in filing the petition to set aside the ex parte order and that the second defendant has not filed an application to condone the delay of 2 ½ years.

11. It is pertinent to note that Under Order IX Rule 7 of Civil Procedure Code, there is no limitation prescribed under the Limitation Act for filing an application to set aside the ex parte order. However, so far as the question of laches are concerned, the parties have to explain the reasons for the laches.

12. In these circumstances, the reasoning given by the trial Court is erroneous. The trial Court could have allowed the application in the interest of justice and also giving one more opportunity to the first defendant to contest the matter.

13. In these circumstances, the fair and decreetal order passed in I.A.No.523 of 2014 in O.S.No.14 of 2012 dated 4.12.2014 on the file of III Additional District Judge at Puducherry is liable to be set aside.

14. Mr.V. Manohar, learned counsel appearing for the petitioner submitted that the fourth defendant in O.S.No.111 of 2011 has filed an

application in I.A.No.70 of 2012 under Order VII Rule 11 of Civil Procedure Code, which is pending before the trial court.

15. The learned counsel for the respondents submitted that the trial Court may be directed to dispose of the suit within a stipulated time.

16. Having regard to the submissions made by the learned counsel on either side, I direct the III Additional District Judge, Puducherry to dispose of the suit in O.S.No.14 of 2012 , on merits and in accordance with law, within a period of four months from the date of receipt of copy of this order.

17. The III Additional District Judge, Puducherry is also directed to dispose of the application in I.A.No.70 of 2012, filed under Order VII Rule 11 of Civil Procedure Code within a period of six weeks from the date of receipt of copy of this order.

18. In case, the trial Court dismiss the application in I.A.No.70 of 2012, it is directed to dispose of the main suit in O.S.No.111 of 2011, on merits and in accordance with law, within a period of ten weeks thereafter.

19. In these circumstances,

(i) the fair and decreetal order passed in I.A.No.106 of 2013 in O.S.No.111 of 2011 on the file of III Additional District Court, Puducherry are set aside;

and

(ii) the fair and decreetal order passed in I.A.No.523 of 2014 in O.S.No.14 of 2012 on the file of III Additional District Judge at Puducherry are set aside and

Both the Civil Revision Petitions are allowed. No costs. Consequently, connected MPs are closed.

27-07-2015

sr
Index:no
website:yes

Note: Issue Order copy on 31.7.2015
To

The III Additional District Court, Puducherry

M. DURAISWAMY,J.,

sr

CRP(PD)Nos.4208/2014 &
1082 of 2015

27-7-2015