

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2015

CORAM ::

THE HONOURABLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(PD) No.1744 of 2015

and

M.P.No.1 of 2015

1.R.Muthukumar

2.R.Manickam

... Petitioners

Vs

1.Santhosh Kumari

2.Madhubala

3.A.Vijayalakshmi

4.A.Ganesh

5.A.Ethiraj @ A.Elumalai

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 04.02.2015 made in I.A.No.14715 of 2014 in O.S.No.12841 of 2010 on the file of VI Additional Judge, City Civil Court, Chennai.

For Petitioners : Mr.S.V.Jayaraman
Senior Counsel
for
M/s.T.Dhanasekaran

For Respondents : Mr.Harshad P.Goklaney

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ORDER

Aggrieved over the order passed in I.A.No.14715 of 2015 in O.S.No.12841 of 2010 on the file of VI Additional Judge, City Civil Court, Chennai, the defendants 4 and 5 have filed the above Civil Revision Petition.

2. The plaintiffs have filed the suit in O.S.No.12841 of 2010 for declaration and for permanent injunction. The said suit is being contested by the defendants on various grounds.

3. The defendants 4 and 5 have filed an application in I.A.No.645 of 2012 under Section 10 of Code of Civil Procedure to stay the suit till the disposal of the first appeal in A.S.No.197 of 2010 on the file of this Court. The said application was dismissed for default on 01.09.2014. Thereafter, the defendants 4 and 5 have filed an application in I.A.No.14715 of 2014 under Order IX, Rule 7 C.P.C. to set aside the order of dismissal for default dated 01.09.2014 of I.A.No.645 of 2012.

4. In the affidavit filed in support of the application, the defendants 4 and 5 have stated that when the matter was posted on 01.09.2014 for arguments, due to bereavement in the family, 4th defendant could not contact his counsel to give instructions to proceed with the matter. When the defendants 4 and 5 have contacted their counsel, it was informed that the application was dismissed for default on 01.09.2014. Further, the defendants 4 and 5 have stated in the affidavit that though application in I.A.No.645 of 2012 was argued before VI Additional Judge, City Civil Court, Chennai and the application was posted for orders on 04.11.2013 itself, the trial Court has not

passed any final order in the application and ultimately on 01.09.2014, dismissed the said application for non-prosecution.

5. The learned Senior Counsel appearing for the petitioners has submitted that both the counsel have appeared before the trial Court and argued the matter on 04.11.2013 and the trial Court adjourned the matter to 18.11.2013 for orders. Thereafter, the matter was adjourned periodically for passing orders by the trial Court and on 02.12.2013, the application was suo-motu re-opened for clarification and posted to 13.12.2013. Thereafter, the matter was adjourned from 13.12.2013 to 30.04.2014 for clarification. In between, on 05.04.2014 since Steno was on leave again it was adjourned to 10.03.2014 for clarification. The trial Court has mechanically adjourned the matter without applying its mind and without stating as to what is the nature of clarification required in the matter in which both the counsel have to advance their arguments. Then, on 17.06.2014 the matter was taken up and adjourned to 04.07.2014 for appearance of both parties. On 06.08.2014, the petitioners were called absent and the matter was posted to 13.08.2014 for arguments and ultimately, on 01.09.2014, the application was dismissed for default.

6. The certified copy of "B" Diary extract produced by the learned Senior Counsel for the petitioners would clearly establish that the petitioners cannot be blamed for not advancing their arguments and for no reason the matter was being adjourned by the trial Court either for orders or for clarification. Even the petitioners have satisfactorily explained the reason for their non-appearance on 01.09.2014. The trial Court should have allowed the application filed under Order IX, Rule 7 C.P.C. and restore the application I.A.No.645 of 2012 to file. In these circumstances, the fair and decreetal order passed in I.A.No.14715 of 2014 is liable to be set aside and accordingly, the same is set aside and I.A.No.645 of 2012 is restored to file.

7. The Civil Revision Petition is allowed. The VI Additional Judge, City Civil Court, Chennai is directed to dispose of I.A.No.645 of 2012 in O.S.No.12841 of 2010 on merits and in accordance with law within a period of two (2) weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P.No.1 of 2015 is closed.

12.06.2015

Index : No
Internet : Yes

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Note : Issue order copy of 15.06.2015.

To
VI Additional Judge,
City Civil Court,
Chennai.

M.DURAIWAMY, J

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C.R.P.No.1744 of 2015

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